

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20235

709

CHRISTOS PAPPAS

APPELLANT

VS.

NICHOLAS G.S. KATZENBACH ET AL

APPELLEES

APPEAL FROM SUMMARY JUDGMENT DECISION

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals

FILED 10/12/07

[Signature]

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1850562

UNITED STATES CIVIL SERVICE COMMISSION
NOTICE OF RATING

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

TITLE OF EXAMINATION

SUBSTITUTE CLERK-CARRIER

DATE OF EXAMINATION

10-16-63

NAME

Chris Pappas

ADDRESS

1801 Clydesdale Pl. NW

CITY AND STATE

Washington 9 DC

This is not a notice of appointment. It is a record of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which you indicated thereon.

Your Rating is — ELIGIBLE

- ☒ This examination is not rated on a numerical basis
☒ Your numerical rating is:

79.8

NOTICE: Eligibility in this examination entitles you to consideration for both substitute clerk and substitute carrier vacancies. If you wish to be considered for SUBSTITUTE CARRIER, you should fill in the enclosed form and return it to this office within 10 days.

Your Rating is — INELIGIBLE for the reasons checked below:

- ☐ The lowest acceptable salary indicated on your application is higher than the salary shown on our announcement.
☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Ineligibles do not receive a numerical grade.
☐ Your application does not show that you meet the minimum requirements as to experience (or education) which were specified in the examination announcement.
☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.

IF THERE IS A CHECK BELOW, IT INDICATES THE AMOUNT OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☒ 5 POINTS—IF YOU ARE APPOINTED YOU WILL BE REQUIRED TO FURNISH TO THE APPOINTING OFFICER EVIDENCE OF HONORABLE SEPARATION FROM THE ARMED FORCES.

☐ 10 POINTS

If you have received an eligible rating, be sure to read the important message on the back of this form.

Executive Secretary
Postal Board of C S Examiners
Room 3006, City Post Office
Washington, D. C. 20013

(Issuing Office and Date of Issue)

JAN 31 1964

UNITED STATES CIVIL SERVICE COMMISSION
NOTICE OF RATING

87003

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

EXACT TITLE OF EXAMINATION

Messenger

DATE OF EXAMINATION

10-9-63

NAME

MR CHRIS POPPOS

ADDRESS

1801 Clydesdale PL NW

CITY AND STATE

WASHINGTON DC

This is not a notice of appointment. It is a record of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which you indicated thereon.

Your Rating is — ELIGIBLE

- ☐ This examination is not rated on a numerical basis
☒ Your numerical rating is: 89.5

Your Rating is — INELIGIBLE for the reasons checked below:

- ☐ The lowest acceptable salary indicated on your application is higher than the salary shown on our announcement.
☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Ineligibles do not receive a numerical grade.
☐ Your application does not show that you meet the minimum requirements as to experience (or education) which were specified in the examination announcement.
☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.
☐

IF THERE IS A CHECK BELOW, IT INDICATES THE AMOUNT OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☒ 5 POINTS—IF YOU ARE APPOINTED YOU WILL BE REQUIRED TO FURNISH TO THE APPOINTING OFFICER EVIDENCE OF HONORABLE SEPARATION FROM THE ARMED FORCES.

☐ 10 POINTS

If you have received an eligible rating, be sure to read the important message on the back of this form.

U.S. CIVIL SERVICE COMMISSION

WASHINGTON 25, D.C.

10N 8 0 1063
(Issuing Office and Date of Issue)

UNITED STATES CIVIL SERVICE COMMISSION
NOTICE OF RATING

657920

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

EXACT TITLE OF EXAMINATION

GUARD

69L

DATE OF EXAMINATION

7-22-1963

NAME

POPPOS, CHRIS

ADDRESS

1801 Clydesdale PL NW

CITY AND STATE

Washington 9 DC

This is not a notice of appointment. It is a record of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which you indicated thereon.

Your Rating is — ELIGIBLE

- ☐ This examination is not rated on a numerical basis
☒ Your numerical rating is: GS-2-88.0

Your Rating is — INELIGIBLE for the reasons checked below:

- ☐ The lowest acceptable salary indicated on your application is higher than the salary shown on our announcement.
☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Ineligibles do not receive a numerical grade.
☐ Your application does not show that you meet the minimum requirements as to experience (or education) which were specified in the examination announcement.
☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.
☐

IF THERE IS A CHECK BELOW, IT INDICATES THE AMOUNT OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☒ 5 POINTS—IF YOU ARE APPOINTED YOU WILL BE REQUIRED TO FURNISH TO THE APPOINTING OFFICER EVIDENCE OF HONORABLE SEPARATION FROM THE ARMED FORCES.

☐ 10 POINTS

If you have received an eligible rating, be sure to read the important message on the back of this form.

U.S. CIVIL SERVICE COMMISSION

WASHINGTON 25, D.C. DEC 6 1963

(Issuing Office and Date of Issue)

INQUIRY AS TO AVAILABILITY

Return
this form to
→

WASHINGTON, D. C., 20012 (City) (State)

April 20, 1964 (Date)

CERT. # 564

Chris Poppo
1801 Clydesdale Place, N.W.
Washington, D.C.

79.8 TP

POSITION

T/Sub Carrier (Indefinite)

LOCATION

WASHINGTON, D. C.

SALARY

2.33ph

PROBABLE DURATION

KIND OF APPOINTMENT

Full Time or Part Time
Temp. Indefinite

(Please correct address if different from above.)

You have been certified by the United States Civil Service Commission as eligible for the employment described above. Please fill out the "Availability Statement" below, indicating whether or not you would accept this position if offered; and return the entire sheet to this office. Appointment would be subject to the Civil Service requirements described on the back of this letter. Whether you are available or not, please reply within _____ days, in order that one of those persons who are available may be selected as promptly as possible to fill this vacancy.

Failure to reply to this inquiry will result in the removal of your name from the list of eligibles.

THIS IS A LETTER OF INQUIRY AND NOT AN OFFER OF EMPLOYMENT. If selected, you will be notified and given further instructions.

Other information: IF YOU ARE INTERESTED, REPORT WITH THIS NOTICE, AND YOUR DISCHARGE IF ENTITLED TO VETERANS PREFERENCE, TO THE SUPERINTENDENT OF EMPLOYMENT, ROOM 3021 CITY POST OFFICE, NO. CAP. AND MASS. AVE. AT 1:00P.M. ON April 23, 1964

MUST BE AVAILABLE
TO WORK ANY HOURS

Sincerely yours,
MUST QUALIFY
ON DRIVING TESTS
(Do not detach)

CARLTON G. BEALL
POSTMASTER

AVAILABILITY STATEMENT

- (Check one)
- ☐ I am available and wish to be considered for the position described above. I can report for duty within _____ days after notification. I am now employed by _____ at _____ as _____
- ☐ I am not available and do not wish to be considered for the position described above. I AM GIVING MY REASONS ON THE REVERSE SIDE OF THIS FORM.

- (Check one)
- ☐ I request that my name be removed from the active list of eligibles until I report that I am available for appointment.
- ☐ Remove my name from the register until _____, 19____, when I will be available for appointment.
- ☐ Consider me available for other appointments (subject to such new conditions as I may have indicated below or on the reverse side of this form).

SIGNATURE OF ELIGIBLE

DATE

NOTE: If you have changed the conditions under which you have previously indicated that you were available, please answer the following questions, stating the conditions under which you are willing to accept appointment in the future.

- A. WHAT IS YOUR EXACT RATING IN THE EXAMINATION? _____
- B. WHICH OF THE FOLLOWING TYPES OF SUBSTITUTE APPOINTMENT WOULD YOU ACCEPT?
(Check appropriate answer(s) at right.)

- | | YES | NO |
|--|-----|----|
| 1. Career? _____ | | |
| 2. Temporary for an indefinite period? _____ | | |
| 3. Temporary for: 1 month? _____ | | |
| 3 months? _____ | | |
| 6 to 12 months? _____ | | |

SEE "INFORMATION FOR ELIGIBLES" ON REVERSE OF THIS FORM

RELEVANT PLEADINGS

MAR 4 1965, LETTER, TINGLEY TO APPELLANT, SEPARATION NOTICE IS VINDICTIVE, AMBIGUOUS, AND WILL STIGMATIZE APPELLANT

MAR 6 1965, APPELLANTS LETTER TO TINGLEY

MAR 8 1965, TINGLEYS LETTER OF SEPARATION IS CONFIRMED, HIS REFERENCE TO APPELLANT NOT COOPERATING IN GIVING HIS ADDRESS IS FALSE

MAR 11 1965, AFFIDAVIT TO PRESIDENT JOHNSON CITING CORUPTION AT POST OFFICE

APR 7 1965, POST OFFICE DEPT LETTER, FRED MAGUIRE STATES THAT APPELLANT .."HAS NO RIGHT OF APPEAL TO CIVIL SERVICE COMMISSION....."

MAY 1965, LEGAL AID ATTORNEY, EDWARD STRAUSS DENIES ASSISTANCE

MAY 12, 1965, CIVIL SERVICE APPEAL FILED

JUL 27 1965, CIVIL SERVICE CLAIMS THAT APPEAL IS BEYOND C. S. C. REGS.

SEPT. 14 1965, C. A. 2221-65, LEAVE TO FILE WITHOUT PREPAYMENT OF COSTS, JUDGE SIRICA, U.S. DISTRICT COURT

JAN 31 1966, CERTIFICATE OF READINESS, APPELLANT WAS READY FOR TRIAL

FEB. 1 1966, CAUSE 2221-65, IS CALENDERED, BY R.M. STEARNS, CLERK

APR 19 1966, DEFENDANTS MOTION FOR SUMMARY JUDGEMENT

APR 22 1966, PLAINTIFF FILES MOTION FOR CONSTITUTIONAL RULING E. G., REQUESTING A RULING ON PROBATIONARY EMPLOYMENT

APR 26 1966, MOTION ON PROBATIONARY EMPLOYMENT IS DOCKETED, BY FIAT

APR 22 1966, HEARING ON SUMMARY JUDGEMENT MOTION OF DEFENDANTS IS SET FOR MAY 3 1966

MAY 3 1966 PLAINTIFF FILES WRITTEN ARGUMENT IN OPPOSITION TO SUMMARY JUDGEMENT MOTION

MAY 3 1966, PLAINTIFF FILES WRITTEN ARGUMENT IN SUPPORT OF MOTION FOR A CONSTITUTIONAL RULING ON PROBATIONARY EMPLOYMENT, (FILED BEFORE HEARING)

MAY 3 1966, JUDGE McGARRAGHY RULES IN FAVOR OF DEFENDANTS MOTION

MAY 4 1966, JUDGE McGARRAGHY DOCKETS HIS ORDER DISMISSING APPELLANTS CAUSE C.A. 2221-65, ON DEFENDANTS SUMMARY JUDGEMENT MOTION

MAY 10 1966, PLAINTIFF GIVES NOTICE OF APPEAL TO U.S. DISTRICT COURT

MAY 19 1966, JUDGE McGARRAGHY DENIES PLAINTIFF RIGHT TO APPEAL
WITHOUT PREPAYMENT OF COSTS

JUNE 3 1966, JUDGE McGARRAGHY REFUSES TO GRANT TIME EXTENTION TO
PLAINTIFF TO PREPARE APPEAL

JUN 28 1966 FILING FEE PAID TO U.S. COURT OF APPEALS, \$25.00

JULY 5 1966 APPELLANT FILES PETITION TO FILE APPEAL WITHOUT PREPAYMENT
OF COSTS, U. S. COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIR.

JUL 5 1966 APPELLANT FILES STATEMENT OF POINTS

JUL 8 1966 APPELLANT FILES STATEMENT AS TO CONTENTS OF JOINT APPENDIX

JUL 15 1966, APPELLEES FILE COUNTERDESIGNATION OF JOINT APPENDIX

SEPT. 2 1966 APPELLANT MAILES REGISTERED LETTER, TO JUDGE McGARRAGHY'S
COURT REPORTER, REQUESTING THAT SHE SEND THE TRANSCRIPT COPIES
WHICH WERE ORDERED MAY 12 1966, REG.No. 766669

SEPT 21 1966, TWO TRANSCRIPTS ARE RECEIVED BY APPELLANT

SEPT 22 1966, CHIEF JUDGE PERMITS APPELLANT TO FILE BRIEF IN ZEROXED FORM

OCT 6 1965 JUDGE McGARRAGHY REFUSES TO DIRECT HIS COURT REPORTER TO
CORRECT TRANSCRIPT

OCT 12 1966 JUDGE McGARRAGHY DENIES APPELLANTS MOTION TO DISQUALIFY HIMSELF

OCT 18 1966 APPELLANT FILES MOTION FOR COURT APPOINTED COUNCEL

NOV 14 1966 JUDGE BAZELON DENIES COURT APPOINTED COUNCEL

DEC 27 1966 APPELLANT REPLIES SUCCESSFULLY TO SHOW CAUSE ORDER

APRIL 3 1967, APPELLANT IS ORDERED TO FILE BRIEF, APRIL 14 1967

FURTHER RELEVANT PLEADINGS

JULY 19 1965, PRESIDENTS COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
CANNOT ACCEPT APPELLANTS RELIGIOUS COMPLAINTS

AUG 6 1965, POST OFFICE SUPPLIES FALSE INFORMATION TO MARYLAND
EMPLOYMENT SECURITY BOARD

AUG 16 1965, AMERICAN CIVIL LIBERTIES UNION DENIES ASSISTANCE TO
APPELLANT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHRISTOS POPPOS)

Plaintiff)

v.)

NICHOLAS deB KATENEBAKH, ET. AL.)

Defendants)

Civil No. 2221-65

AFFIDAVIT

I, A. C. Hahn being duly sworn, depose and state:

That I am the Deputy Assistant Postmaster General, Bureau of Operations, Post Office Department, in charge of Field Operations;

That Section 333.5, Proficiency Requirements of the Postal Manual, is administered by the Bureau of Operations;

That the long consistent interpretation with regard to probationary employees has been that they do not have the right to retake a failed examination. "New employees are excepted from Section 333.564a, Postal Manual, which deals with the right of regular or non-probationary employees to repeat examinations." This interpretation is in accord with Section 717.323, Postal Manual, which provides that a separation-disqualification action should be initiated at any time in the trial period when it becomes apparent that the employee lacks fitness and capacity for efficient service and with Section 746.4A, Postal Manual, which requires that an employee complete six consecutive months of employment from date of appointment to have the right to appeal an adverse decision or adverse action taken against him.

A. C. Hahn

A. C. Hahn
Deputy Assistant Postmaster General
Bureau of Operations
Post Office Department

Memorandum • POST OFFICE DEPARTMENT

SUBJECT: Disqualification During Probationary Period -
Unsatisfactory Performance

DATE: March 4, 1965

FROM: Postmaster
Hyattsville, Maryland 20780

IN REPLY
REFER TO: EFT/FHD/fh P.O.CL: 1

TO: Mr. Christos Poppo
Substitute Clerk
Dispatch Section - Annex
Hyattsville, Maryland 20780

YOUR REFERENCE:

I regret that it is necessary to separate you from the Postal Service because you are not satisfactorily meeting the requirements of the position you occupy. Apparently you are not adapted to the type of work performed in the Post Office.

You were assigned the West and Adelphi sections of the city scheme on January 6, 1965. When tested on March 3, 1965, you attained a score of 4% correct. This performance indicates either a lack of ability or lack of interest which cannot be tolerated in the Postal Service.

Your last day of service will be Friday, March 5, 1965.


Egbert F. Tingley.

Memorandum • POST OFFICE DEPARTMENT

SUBJECT: Separation - Disqualification

DATE: March 8, 1965

FROM: Postmaster
Hyattsville, Maryland 20780

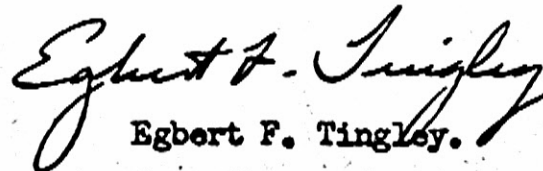
IN REPLY
REFER TO: EFT/FHD/fh P. O. CL: 1

TO: Mr. Christos Poppas
5700 - 16th Avenue, #204
Hyattsville, Maryland 20782

YOUR REFERENCE:

I have received your letter of March 6, 1965, giving reasons for your score of 4% on the scheme examination, and for failure to cooperate in giving your home address to your supervisor.

Your explanation does not affect my decision to separate you from the Postal Service, effective March 5, 1965. A score of 4% indicates an attitude so dilatory as to justify no leniency.


Egbert F. Tingley.

X



UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

XAE:APP
YOUR REFERENCE

APR 21 1965

Mr. Christos Poppo
6105 Lamont Drive
Hyattsville, Maryland

Dear Mr. Poppo:

This is in reply to your letters of March 9, 1965 and March 14, 1965 concerning your status in view of the fact that you were separated from a position with the Hyattsville Post Office Dispatch Section.

The Post Office, Hyattsville, Maryland, has furnished information showing that you were separated-disqualification while serving a probationary period from the position of Distribution Clerk (Sub) PF-4, \$2.48 per hour, effective March 5, 1965 for failure to make a serious effort to learn the city distribution scheme.

Civil Service regulations provide that an agency may terminate an employee who is serving a probationary period because his work performance or conduct fails to demonstrate his fitness or his qualification for continued employment. An employee whose services are terminated for the above reasons may appeal to the Civil Service Commission only on the grounds the action was taken for political reasons not required by law or resulted from discrimination because of sex, marital status or physical handicap.

There is no evidence in either your letters or their enclosures to show that your removal was based upon any of the aforementioned grounds; therefore we have no jurisdiction to accept your appeal.

The appeal is denied.

This decision becomes a final decision of the Civil Service Commission unless either the appellant or the employing agency files an appeal with the Board of Appeals and Review, U. S. Civil Service Commission, Washington, D. C., 20415, within seven (7) days of receipt of this decision.

Sincerely yours,

James T. Masterson
James T. Masterson, Chief
Appeals Examining Office

XI

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT



UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
BAR:IS:vfh

MAY 4 1965
YOUR REFERENCE

Mr. Christos Poppos
5700 16th Avenue, Apt. 204
Hyattsville, Maryland

Dear Mr. Poppos:

Mr. Masterson has referred to the Board of Appeals and Review the letter of April 21, 1965, which you asked be considered as an appeal.

Although you did not state specifically what action you wished to appeal to the Commission, it appears from the record that it is your desire to appeal against the action of the Postmaster, Hyattsville, Maryland, whereby your employment as Substitute Distribution Clerk was terminated, effective March 5, 1965, during the one-year probationary period which had begun on October 26, 1964. It also appears from the record that the reason relied upon by the Postmaster for the termination of your employment as Substitute Distribution Clerk was his dissatisfaction with your performance in attaining a score of only 4% correct on a city scheme examination when tested on March 3, 1965.

Under those circumstances, the termination of your employment during probation was subject to Section 315.804 of the Civil Service Regulations. The only right of appeal to the Commission against a termination action subject to Section 315.804 is that specified in paragraph (b) of Section 315.806 of the Civil Service Regulations. Paragraph (b) of Section 315.806 provides for appeal to the Commission on the grounds the termination was based on political reasons not required by statute, or resulted from discrimination because of sex or marital status, or

from improper discrimination because of physical handicap. Paragraph (b) of Section 315.806 also provides that when appeal is based upon any of these grounds the appellant shall submit an affidavit setting forth the facts and circumstances on which the appeal is based.

Since no such affidavit as is required by regulation has been received from you, the Appeals Examining Office has correctly refused to accept your attempted appeal. Furthermore, it appears that the normal regulatory time limit for appeal to the Commission in your case has expired. On the other hand, it also appears that the Appeals Examining Office issued you a premature appellate decision on April 21, 1965, when you had not yet made an appeal to the Commission and when, so far as the record shows, you had not yet been notified of your right of appeal to the Commission or of the procedure and time limit for exercising that appeal right.

Accordingly, the Board of Appeals and Review hereby rescinds the Appeals Examining Office's decision of April 21, 1965, in your case so as to afford you a period of ten days in which you may exercise the right of appeal provided in Section 315.806 of the Civil Service Regulations. If you believe you have grounds for appeal as provided in paragraph (b) of Section 315.806 and if you wish to make such appeal, you should within ten days of your receipt of this letter submit directly to the Commission's Appeals Examining Office the necessary affidavit. Otherwise, any future attempt on your part to appeal to the Commission against the termination of March 5, 1965, may be rejected as untimely.

For the Commissioners:

Sincerely yours,

E. T. Groark

E. T. Groark
Chairman, Board of Appeals
and Review

Re case of Mr. Christos Poppo

Distribution:

Appeals Examining Office

Postmaster
U. S. Post Office
Hyattsville, Maryland 20780

Regional Office
Post Office Department
Washington, D. C. 20260



UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

XAE:APP

YOUR REFERENCE

JUN 30 1965

Mr. Christos Poppo
6105 Lamont Drive
Hyattsville, Maryland

Dear Mr. Poppo:

This is in further reference to your appeal protesting the circumstances of your termination-disqualification from the position of Distribution Clerk (Sub), PF-4, \$2.48 per hour, U. S. Post Office, Hyattsville, Maryland, effective March 5, 1965 "for failure to make any serious effort to learn the city distribution scheme, attaining grade of only 4% after 4 months in the service."

To recapitulate, on March 9, 1965 you wrote to us and we interpreted your letter and its enclosure as an appeal. After investigation we issued a decision on April 21 denying your appeal for lack of jurisdiction. You appealed from this decision. On May 4, 1965 the Commission's Board of Appeals and Review rescinded our decision of April 21, 1965 in order to afford you a period of ten days in which you might exercise the right of appeal provided in Section 315.806 of the Civil Service regulations.

Section 315.806 provides that probationary employees whose services are terminated either because their work performance or conduct failed to demonstrate their fitness or qualification for continued employment may appeal to the Civil Service Commission on the ground that the action was based on political reasons not required by law, or resulted from discrimination because of sex, marital status, or physical handicap.

The decision of the Board of Appeals and Review advised you that when an appeal was based upon any of the aforementioned grounds the appellant shall submit an affidavit setting forth the facts and circumstances on which the appeal was based.

On May 12, 1965 you personally delivered an affidavit and enclosures, appealing your discharge.

Your appeal was based on the ground that the action was taken for political reasons not required by statute and on the basis of discrimination because of marital status, physical status and religion.

XIII

Discrimination because of religion is not a ground for appeal under the provisions of Section 315.806. Allegations of this type must be filed with the President's Committee on Equal Employment Opportunity.

To meet the criteria of discrimination because of physical handicap the appellant must show (1) the existence of a physical handicap; (2) that despite the physical handicap the appellant is ready, willing and able to perform the duties of his job; and (3) despite this he was refused the opportunity to perform the duties of his position.

Your statement that you were ill with influenza three out of the four months you were with the Post Office does not meet the criteria set forth above.

We find the allegation of discrimination because of physical handicap is not sustained.

In support of your allegation that you were discriminated against because of your marital status you stated "In as much (considering)--that I am single there was no way to coerce me to follow the Catholic ideology (obedience to the church--to gambling--to corruption)---CONSEQUENTLY Mr. Tingley separated me (fired me)."

To support an allegation of discrimination because of marital status, one must show and support by fact that he is married, or on the other hand, single and that because of his particular status his presence as an employee was not acceptable to supervisory officials and therefore led to his removal. This you do not show. Therefore we must dismiss this contention.

In support of your allegation of political discrimination you stated you voted Republican in 1964 which you said was known to all because of "our discussion". You added that you voted Democrat in 1960 and this was also known to all.

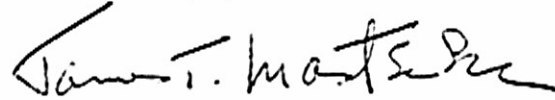
A narration of one's voting history showing independence in the exercise of the franchise cannot serve to show the existence of discrimination because of partisan political reasons.

We find you have not shown that the action taken against you was for political reasons not required by statute.

In light of our analysis above we find you have not brought your appeal within the purview of Section 315.806 of the Civil Service regulations; therefore we cannot accept your appeal.

This decision becomes a final decision of the Civil Service Commission unless either the appellant or the employing agency files an appeal with the Board of Appeals and Review, U. S. Civil Service Commission, Washington, D. C., 20415, within seven (7) days of receipt of this decision.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James T. Masterson", written in a cursive style.

James T. Masterson, Chief
Appeals Examining Office



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

BAR:IS:ka

YOUR REFERENCE

JUL 27 1965

Mr. Christos Poppo
6105 Lamont Drive
Hyattsville, Maryland

Dear Mr. Poppo:

This refers to your letter of July 3, 1965, asking the Board of Appeals and Review to examine an appeal you had filed with the Commission's Appeals Examining Office on May 12, 1965, and to render a decision in the matter.

In accordance with your request, the Board has fully reviewed the appellate record in your case.

The record shows that your appeal of May 12, 1965, is against an action by the Postmaster, Hyattsville, Maryland, whereby your employment as Substitute Distribution Clerk was terminated, effective March 5, 1965, during the one-year probationary period which had begun on October 26, 1964. The Board's letter of May 4, 1965, explained that the termination of your employment was subject to Section 315.804 of the Civil Service Regulations and that the only right of appeal to the Commission against such a termination was that specified in paragraph (b) of Section 315.806 of the Civil Service Regulations. Paragraph (b) of Section 315.806, as the Board explained, provides for appeal on the grounds the termination was based on political reasons not required by statute, or resulted from discrimination because of sex or marital status, or from improper discrimination because of physical handicap. The Board also explained that when appeal is based upon any of these grounds the appellant must submit an affidavit setting forth the facts and circumstances on which the appeal is based.

As a result of its full review of the appellate record in your case, the Board of Appeals and Review is unable to find any statement of facts or circumstances showing a basis on which the Commission could

properly assert jurisdiction for appellate review of the termination of your employment as Substitute Distribution Clerk during the probationary period. Accordingly, the Board concurs in the conclusion of the Appeals Examining Office that your appeal is beyond the Commission's authority for adjudication under Section 315.806 of the Civil Service Regulations.

For the Commissioners:

Sincerely yours,

E. T. Groark

E. T. Groark
Chairman, Board of Appeals
and Review

(A) APPELLANT APPEALS FROM A SUMMARY JUDGEMENT ORDER ISSUED BY
JUDGE McGARRAGHY, UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA, DISMISSING CAUSE No. 2221-65, POPPOS VS KATZENBACH ET AL
MAY 3 1966.

(B) APPELLANT FILED NOTICE OF APPEAL MAY 10 1966. UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA.

(C) CERTIFICATE OF SERVICE

COPY TO: FRANK Q. NEBEKER, ASSISTANT U.S. ATTORNEY, U.S. DISTRICT
COURT BUILDING, WASHINGTON 1 D. C. DELIVERED PERSONALLY TO FRANK Q.
NEBEKER, APPELLEES ATTORNEY, APRIL 14 1967.



CHRISTOS POPPOS

APPELLANT PRO SE

5700 16 TH AVE., APT. 204

HYATTSVILLE, MARYLAND

STATEMENT OF QUESTIONS PRESENTED

- (1) THE QUESTION IS WHETHER JUDGE MCGARRAGHY ERRED IN RENDERING HIS SUMMARY JUDGEMENT DECISION, OF MAY 4 1966, C. A. 2221-65
- (2) THE QUESTION IS WHETHER APPELLANT IS ENTITLED TO REDRESS AND RELIEF, DUE TO THE UNCONSTITUTIONAL MANNER IN WHICH HE WAS SEPARATED FROM THE UNITED STATES POSTAL SERVICE.
- (3) THE QUESTION IS WHETHER THE PRACTICE OF PROBATIONARY EMPLOYMENT AS UTILIZED BY THE U. S. POST OFFICE AND THE U. S. CIVIL SERVICE IS CONSTITUTIONAL.
- (4) THE QUESTION IS, WAS APPELLANT A "FEDERAL EMPLOYEE", AND IF SO, WHY WAS HE NOT ACCORDED THE RIGHT OF DUE PROCESS, AND EQUAL PROTECTION, UNDER THE UNITED STATES CONSTITUTION.

TITLE PAGE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHRISTOS POPPOS _____
APPELLANT

No. 20283

VS.

NICHOLAS DEB. KATZENBACH _____
APPELLEES

JOHN W. MACY JR. _____
CHAIRMAN CIVIL SERVICE COMMISSION

LUDWIG J. ANDOLSEK _____
CIVIL SERVICE COMMISSIONER

ROBERT E. HAMPTON _____
CIVIL SERVICE COMMISSIONER

LAWRENCE F. O'BRIEN _____
POSTMASTER GENERAL

EGBERT F. TINGLEY _____
POSTMASTER, HYATTSVILLE, MARYLAND

CHRISTOS POPPOS
APPELLANT, PRO SE

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WITH RESPECT TO AIDING THE COURT, APPELLANT DESIRES THE COURT TO
READ THE FOLLOWING:

CIVIL SERVICE APPEAL
PLAINTIFFS EXHIBITS
APPELLANTS REJECTED APPEAL BRIEF
COURT RECORD

JURISDICTIONAL STATEMENT

THIS AN APPEAL FROM A SUMMARY JUDGEMENT ORDER DISMISSING APPELLANTS CAUSE, 2221-65 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, BY JUDGE JOSEPH C. McGARRAGHY, MAY 3 1966.

THE APPELLANT FILED NOTICE OF APPEAL WITH THIS COURT ON MAY 10 1966. ON SEPTEMBER 22 1966, CHIEF JUDGE BAZELON GRANTED PERMISSION FOR APPELLANT TO FILE HIS BRIEF AND JOINT APPENDIX IN ZEROXED OR MIMEOGRAPH FORM. APPELLANT DOES NOT HAVE FUNDS TO HIRE A LAWYER CONSEQUENTLY HE PRESENTS HIS CASE PRO SE.

THE APPELLANT APPEALS FOR A RULING INDICATING WHETHER PROBATIONARY EMPLOYMENT IS CONSTITUTIONAL, WHETHER APPELLANT IS ENTITLED TO REDRESS AND RELIEF, AND WHETHER JUDGE McGARRAGHY ERRED IN DISMISSING HIS CAUSE.

THIS COURT DERIVES ITS JURISDICTION UNDER THE CONSTITUTION, ARTICLE (3) SECTION (1) AND (2). IN AS MUCH AS THE UNITED STATES DISTRICT COURT IS A CONSTITUTIONAL COURT, THOUGH INFERIOR, THIS COURT HAS JURISDICTION TO ACCEPT APPEALS.

STATEMENT OF CASE

THIS IS AN ACTION DESIGNED PRINCIPLY TO TEST WHETHER
PROBATIONARY FEDERAL EMPLOYMENT IS CONSTITUTIONAL.

WE ARE CONFRONTED WITH THE STRANGE PARADOX, WHERE ON THE HAND /ONE
A UNITED STATES CITIZEN WITH FULL CONSTITUTIONAL PRIVILEGES SUDDENLY LOSES
THEM ALL WHEN HE ACCEPTS FEDERAL EMPLOYMENT IN A PROBATIONARY STATUS.
IN THE APPELLANTS INSTANCE HE WAS GRANTED CAREER APPOINTMENT TO THE
POST OFFICE SUBJECT TO ONE YEAR PROBATIONARY PERIOD. PROBATION WAS
MANDATORY, E.G., APPELLANTS EXHIBIT 14.

IN A TIME PERIOD WHEN A CITIZEN POSSESSES UNPRESEDENTED
CONSTITUTIONAL RIGHTS AND PRIVILEGES, WE FIND THAT THE FEDERAL
GOVERNMENT EMPLOYEE IS NOT ACCORDED THESE SAME RIGHTS AND PRIVILEGES.

IN DISMISSING APPELLANTS CAUSE JUDGE McGARRAGHY RULED THAT
APPELLANT HAD "NO GENUINE ISSUE AS TO ANY MATERIAL FACT". THE DEFENDANTS
ATTORNEYS STATE THAT "PLAINTIFF WAS A PROBATIONARY EMPLOYEE WHO HAD NO
STATUTORY RIGHTS." DEFENDANTS MOTION FOR SUMMARY JUDGEMENT, UNDER
MEMORANDUM OF POINTS AND AUTHORITIES, PAGE (1) UNDER INTRODUCTION.

IN ADDITION WE FIND THAT THE POST OFFICE STATES THAT AN EMPLOYEE
MUST BE EMPLOYED 6 CONSECUTIVE MONTHS BEFORE HE HAS A RIGHT TO APPEAL ,
POST OFFICE REG. 746.4, GOVTS. EXHIBIT 3, COURT RECORD

WE FURTHER FIND THAT DUE PROCESS AND EQUAL TREATMENT IS NOT
AVAILABLE THROUGH THE CIVIL SERVICE COMM. E.G., C.S. COMM. LETTER OF
JULY 27 1965, APPELLANTS EXHIBIT No. 9 PAGE 2, "ACCORDINGLY THE
BOARD CONCURS IN THE CONCLUSION OF THE APPEALS EXAMING OFFICE THAT
YOUR APPEAL IS BEYOND THE COMMISSIONS AUTHORITY FOR ADJUDICATION, UNDER
315.806 OF THE CIVIL SERVICE REGULATIONS,"

STATEMENT OF POINTS

PAR. (1)

SECTION ONE

THE U. S. POST OFFICE VIOLATED APPELLANTS RIGHT OF "FREEDOM OF SPEECH" UNDER ARTICLE (1) OF THE BILL OF RIGHTS. E. G. JULIAN BOND VS. JAMES "SLOPPY" FLOYD ET AL. IT IS OBVIOUS FROM THE BOND DECISION, THAT AN EMPLOYER MAY NOT DEPRIVE AN AMERICAN CITIZEN OF HIS RIGHT TO WORK BY DENYING HIS FREE EXPRESSION, AND THEN USING THAT AS A PRETEXT TO PREVENT HIM FROM BEING SEATED, OR AS IN THE APPELLANTS CASE, SEPARATE HIM FROM HIS CHOSEN FIELD OF WORK, AND HIS LIVELIHOOD, E. G.,

CHIEF JUSTICE WARREN, PAGE 14 OF THE BOND DECISION, "WE CANNOT FOR PURPOSES OF OUR ASSUMPTION OF JURISDICTION, BETWEEN A DISQUALIFICATION WHICH ALTHOUGH UNDER COLOR OF A PROPER STANDARD, IS ALLEGED TO VIOLATE THE FIRST AMENDMENT" /DISTINGUISH,

FROM PAGE 19 AND 20 "WE THEREFORE HOLD THAT THE DISQUALIFICATION OF BOND FROM MEMBERSHIP IN THE GEORGIA HOUSE BECAUSE OF HIS STATEMENTS VIOLATED BOND'S RIGHT OF FREE EXPRESSION UNDER THE FIRST AMENDMENT" E. G., BOND DECISION U.S. SUPP No. 87 OCT. TERM, 1966

PAR (2) THE POST OFFICE VIOLATED APPELLANTS PRIVILEGE TO BE IN THE EMPLOY OF THE UNITED STATES, AS REPRESENTED BY THE FEDERAL GOVERNMENT. REV. WILLIAM B. ADAMS VS. MONTGOMERY COUNTY COUNCIL, E. G.

JUDGE SHURE SAID "THE COUNCIL DEPRIVED MR. ADAMS OF HIS RIGHT TO FREE SPEECH BY FIRING HIM" E. G., NEWSPAPER WASH POST MARCH 31, 1967

STATEMENT OF POINTS

PAR (1)

SECTION TWO

THE U.S. POST OFFICE VIOLATED APPELLANTS "LIBERTY" RIGHTS UNDER THE CONSTITUTION, ARTICLE (14) SECTION (1). IN SEPARATING APPELLANT WITHOUT DUE PROCESS, AND IN A VINDICTIVE MANNER THE P. O. VIOLATES HIS LIBERTY TO SEEK FURTHER GOVERNMENT EMPLOYMENT. CONSIDER WHAT THE PRESENT POSTMASTER GENERAL HAS TO SAY ABOUT THE ADMINISTRATION

OF THE U.S. POST OFFICE, E.G., LAWRENCE F. O'BRIEN:

"... A RESTRICTIVE JUNGLE OF LEGISLATION AND CUSTOM" "... A TOTTERING STRUCTURE" "... A HARDENING OF THE POSTAL ARTERIES" "SELF DESTRUCTIVE" E.G. THE WASH POST, THE FED DIARY, APR 9 1967

PAR (2) "PRESIDENT JOHNSON HAS NAMED A TEN-MEMBER PANEL TO DETERMINE WHETHER THE U.S. POST OFFICE DEPARTMENT SHOULD BE RECAST AS A NON-CABINET FEDERAL CORPORATION AS POSTMASTER GENERAL LAWRENCE F. O'BRIEN SUGGESTED" . . . E.G., W.POST. APR 9 1967

THE POST OFFICE DISCRIMINATES AT WHIM AND WILL. E.G.,

"PREJUDICE CHARGED IN 2 POSTAL FIRINGS" THE NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES HAS COMPLAINED TO SEVERAL GOVERNMENT OFFICIALS THAT DISCRIMINATION WAS USED IN THE FIRING OF TWO NEGRO WOMEN EMPLOYEES OF THE WASHINGTON CITY POST OFFICE. . . "

PAR (3) APPARENTLY A CITIZEN LOSES HIS CONSTITUTIONAL RIGHTS WHEN HE WORKS FOR THE FEDERAL GOVERNMENT. E.G.

CSE OFFICIAL ADMITS THAT SENATOR ERVIN HAS BROUGHT OUT "ENOUGH EXAMPLES OF OVER ZEALOUS MANAGEMENT TO CAST CONSIDERABLE DOUBT UPON THE FEDERAL GOVERNMENT AS A GOOD EMPLOYER." E.G. C.S. COMMISSIONER ROBERT HAMPTON, W.NEWS, 9 TO 4:30 COLUMN, NOV 18 1966

SENATOR ERVIN, CHAIRMAN CONSTITUTIONAL RIGHTS SUB COMMITTEE SPONSORS A "BILL OF RIGHTS" FOR GOVERNMENT EMPLOYEES. IT WOULD SEEM THAT THE CONSTITUTION SHOULD BE ADEQUATE TO ASSURE THE RIGHTS OF GOVERNMENT EMPLOYEES, HOWEVER, IT APPEARS THAT THE FEDERAL GOVERNMENT CONSIDERS ITSELF IMMUNE TO THE RESPONSIBILITIES UNDER THE CONSTITUTION. E.G., W. STAR, FED. SPOTLIGHT, FEB. 7 1967

PAR (4) THE POST OFFICE IS SLOW AND DILATORY, WHERE CHANGE IS INVOLVED

"NEW POSTAL HIRING RULE" "POSTMASTER GEN. LAWRENCE F. O'BRIEN ANNOUNCED TODAY THAT APPLICANTS FOR POSTAL JOBS WILL NOT HAVE TO LIVE IN THE COMMUNITY WHERE THEY WORK AFTER JUNE 30." "A LOCAL RESIDENCE REQUIREMENT FOR POSTAL CLERKS, MAIL CARRIERS AND OTHER POST OFFICE EMPLOYEES HAS BEEN IN EFFECT FOR NEARLY 25 YEARS " E.G., W. NEWS MAR 17 1967.

THE PRESENT POSTMASTER GEN. FEELS THAT THE PRESENT POST OFFICE ADMINISTRATIVE PROCESS IS A FAILURE. E.G.

"POST OFFICE CORPORATION PROPOSED" "POSTMASTER GENERAL LAWRENCE F. O'BRIEN SUGGESTED YESTERDAY THAT HIS JOB BE ABOLISHED, AND HIS 700,000 MAN DEPARTMENT BE TURNED INTO A NON-PROFIT GOVERNMENT CORPORATION" E.G., W. POST, APR 4 1967.

STATEMENT OF POINTS

SECTION THREE

PAR (1) THE U.S. POST OFFICE HAS VIOLATED APPELLANTS "PRIVILEGES AND IMMUNITIES" UNDER THE CONSTITUTION OF THE UNITED STATES. ARTICLE (14) SECTION (1) APPELLANT CLAIMS THAT HE WAS DENIED THE PRIVILEGE TO WORK FOR THE FEDERAL GOVERNMENT, BY THE MANNER IN WHICH HE WAS SEPARATED. APPELLANT QUALIFIES TO WORK AS, MAIL HANDLER, MAIL CARRIER, MESSENGER AND GUARD. E.G., J.A. PAGES 2, 3, 4, AND 5

PAR (2) THE POSTMASTER, HYATTSVILLE, MARYLAND, EGBERT F. TINGLEY SHOULD NOT BE GRANTED IMMUNITY FROM PROSECUTION, MERELY BECAUSE HE IS A CITIZEN ACTING IN A FEDERAL CAPACITY. E.G. THE RAUS-HEINE IMMUNITY ISSUE.

"IN A 1959 CASE, JUDGE LEARNED HAND SPELLED OUT THE REASONS FOR PROTECTING OFFICIALS AGAINST SLANDER SUITS." "IT GOES INDEED WITHOUT SAYING THAT AN OFFICIAL, WHO IS IN FACT GUILTY OF USING HIS POWERS TO VENT HIS SPLEEN UPON OTHERS, OR FOR ANY OTHER PERSONAL MOTIVE NOT CONNECTED WITH THE PUBLIC GOOD, SHOULD NOT ESCAPE LIABILITY FOR THE INJURIES HE MAY SO CAUSE; AND IF IT WERE POSSIBLE IN PRACTICE TO CONFINE SUCH COMPLAINTS TO THE GUILTY, IT WOULD BE MONSTROUS TO DENY RECOVERY." E.G., W. STAR, APR 24 1966.

STATEMENT OF POINTS

SECTION FOUR

PAR (1) THE U.S. POST OFFICE VIOLATED APPELLANTS "DUE PROCESS" UNDER THE CONSTITUTION, DUE PROCESS RIGHTS, ARTICLE (14) SECTION (1) APPELLANT CLAIMS IMPROPER PROCEDURE VIOLATIONS, C.S. REG. 315.806 (C).

E.G., COMPLAINT No. 6 AND SUPPORT FOR COMPLAINT No. 6, COMPLAINT BRIEF, C.A. 2221-65. APPELLANT CLAIMS THAT HE WAS TOLD THAT HE WAS ENTITLED TO RETAKE SCHEME TEST E.G., COMPLAINT No. 2 AND SUPPORT No. 2 THERETO, COMPLAINT BRIEF C.A. 2221-65. HOWEVER, THE TRUE FACTS IN THE MATTER, ARE AS ADMITTED BY DEFENDANTS IN THEIR MOTION FOR SUMMARY JUDGEMENT, FILED APR 19 1966, PAGE 5 OF ARGUMENT, 3RD PAR E.G.,

" THAT HE AS A NEW EMPLOYEE WAS NOT ENTITLED TO REPEAT EXAMINATION. ."

ON PAGE ONE OF "MOTION FOR SUMMARY JUDGEMENT" UNDER INTRODUCTION, DEFENDANTS STATE:

"DEFENDANTS ASSERT THAT THE PLAINTIFF WAS A PROBATIONARY EMPLOYEE WHO HAD NO STATUTORY RIGHTS"

PAR (2) APPELLANT CLAIMS THAT HE WAS DENIED THE RIGHT TO RECEIVE "COUNCELING ENCOURAGEMENT OR NECESSARY TRAINING" E.G., EMPLOYEE CONDUCT BOOKLET ISSUED BY POSTMASTER TINGLEY, SUPPORT FOR COMPLAINT No. 2 UNDER (C) AND (D), ENCLOSURE (M) OF PLAINTIFFS C.S. APPEAL FILED MAY 12 1965

PAR (3) BOOK: "THE REPORT OF THE PRESIDENTS COMMITTEE ON CIVIL RIGHTS" ENTITLED "TO SECURE THESE RIGHTS" U.S. GOVT. PRINTING OFFICE WASHINGTON 1947, PAGES 6,7,8, AND 9. THIS REPORT LISTS FOUR ESSENTIAL RIGHTS. E.G.,

1. THE RIGHT TO SAFETY AND SECURITY OF THE PERSON
2. THE RIGHT TO CITIZENSHIP AND ITS PRIVILEGES
3. THE RIGHT TO FREEDOM OF CONSCIENCE AND EXPRESSION
4. THE RIGHT TO EQUAL OPPORTUNITY

THE COMMITTEE FELT THAT THERE ARE AT LEAST 4 FUNDAMENTAL RIGHTS THAT ARE POSSESSED BY ALL U.S. CITIZENS. THE POST OFFICE VIOLATED EACH OF APPELLANTS FOUR FUNDAMENTAL RIGHTS.

APPELLANT WAS SEPARATED IN A VINDICTIVE MANNER, BY LETTER, WAS NOT ACCORDED DUE PROCESS, AND WILL BE STIGMATIZED, SHOULD HE APPLY FOR FOR FURTHER GOVERNMENT SERVICE BY HIS LETTER OF SEPARATION, WHICH WILL

ACCOMPANY EACH AND EVERY APPLICATION FOR EMPLOYMENT.

PAR (4) BOOK: "LAW ENFORCEMENT A REPORT ON EQUAL PROTECTION IN THE SOUTH". U.S. COMMISSION ON CIVIL RIGHTS, 1965, US.GOV'T. PRINTING OFFICE. E.G., PAGE 172.

" THE ASSURANCE OF PERSONAL SECURITY IS A RIGHT OF CITIZENS IN OUR SOCIETY FUNDAMENTAL TO THE EXERCISE OF ALL OTHER RIGHTS. THE CONSTITUTION SECURES THIS RIGHT BY REQUIRING PUBLIC OFFICIALS TO EXTEND THE EQUAL PROTECTION OF THE LAWS TO ALL PERSONS WITHIN THEIR JURISDICTION. IN PARTICULAR, ALL PERSONS ARE ENTITLED TO RECEIVE EQUAL PROTECTION FROM THE POLICE, AND EVEN-HANDED INVESTIGATION AND PROSECUTION OF OFFENCES COMMITTED AGAINST THEM, INCLUDING NON DISCRIMINATORY SELECTION OF JURIES. THEY ARE ALSO ENTITLED TO BE FREE FROM HARASSING ARRESTS OR OTHER DISCRIMINATORY LEGISLATION. OFFICIALS WHO DENY TO ANY CLASS OF PERSONS THE PROTECTION OF THE LAWS OR WHO USE LEGAL PROCESSES UNJUSTIFIABLY TO HARASS OR PUNISH, VIOLATE THE FEDERAL CONSTITUTION AND THEIR OATH TO UPHOLD IT."

PAR (5) IT IS INTERESTING TO NOTE JUDGE HOLTZOFF'S DECISION ON PROBATIONARY EMPLOYMENT OF POLICE OFFICERS IN THE DISTRICT OF COLUMBIA. PVT. TROY D. MARTIN VS. DISTRICT OF COLUMBIA, U.S. DISTRICT COURT, JUDGE ALEXANDER HOLTZOFF, W. STAR, NOV 10 1966, E.G., W.POST NOV 11 1966:

"U.S. DISTRICT COURT JUDGE ALEXANDER HOLTZOFF RULED TODAY THAT ROOKIE POLICEMEN IN THE DISTRICT SERVING THEIR FIRST PROBATIONARY YEAR HAVE THE SAME RIGHT AS VETERAN OFFICERS TO A FULL HEARING WHEN FACED WITH IMMEDIATE DISMISSAL."

PVT. MARTIN WAS DENIED DUE PROCESS AND EQUAL TREATMENT, CONSEQUENTLY HIS FIRING WAS OVER RULED. APPELLANT WAS DENIED DUE PROCESS, BOTH BY THE POST OFFICE AND THE CIVIL SERVICE COMMISSION.

JUDGE SHURE RULES ON DUE PROCESS. REV. WILLIAM B. ADAMS VS. MONTGOMERY COUNTY COUNCIL, E.G.,

"STATEMENTS CRITICIZING PUBLIC POLICY AND THE IMPLEMENTATION OF IT MUST BE PROTECTED." MR. ADAMS. . . "HAD NOT BEEN CONFRONTED WITH ANY SPECIFIC OR DETAILED CHARGES AGAINST HIM, NOR WAS HE CONFRONTED WITH ANY WITNESSES WHO TESTIFIED TO ANY DAMAGE TO THE COUNTY OR THAT HE DOING ANYTHING ILLEGAL OR IMMORAL." E.G., W.POST MAR 23 1967

APPELLANT CLAIMS THAT POSTMASTER TINGLEY DENIED ACCESS TO EVIDENCE, TO POSTAL FILES, AND ANY ASSISTANCE WHAT-SO-EVER. POSTMASTER TINGLEY DID NOT ADVISE APPELLANT OF HIS RIGHT OF APPEAL.

APPELLANT CLAIMS DELIBERATE DISCRIMINATION BY POST OFFICE E.G., C. A. 2221-65 COURT BRIEF, COMPLAINT No. (3) AND SUPPORT (3) THERETO. PAR (6) APPELLANT CHARGES THAT THE POST OFFICE SUPPLIED FALSE AND MISSLEADING INFORMATION TO THE C. S. COMMISSION. E.G.,

POST OFFICE LETTER OF MAR 4 1965, "SCORED 4% " (THIS IS ACCURATE)
PLAINTIFFS EXHIBITS (2) PAGE (2)

POST OFFICE LETTER OF MARCH 8 1965, " AND FOR FAILURE TO COOPERATE
IN GIVING YOUR HOME ADDRESS TO YOUR SUPERVISOR" (FALSE)

POST OFFICE NOTIFICATION OF PERSONNEL ACTION, MAR 12 1965
"4% AFTER 4 MONTHS" PLAINTIFFS EXHIBIT No. 16 (FALSE)

CIVIL SERVICE LETTER OF JUNE 30 1965, "4% AFTER 4 MONTHS" (FALSE)
PLAINTIFFS EXHIBIT No. (7) PAGE (1) 1 st PAR.

STATE OF MARYLAND DEPT OF EMPLOYMENT SECURITY, AUG 6 1965,
"4% AFTER 4 MONTHS (FALSE) PLAINTIFFS EXHIBIT No. 15

IN POST OFFICE LETTER OF MARCH 4 1965, POSTMASTER TINGLEY SHOWS THAT
HE KNOWS THAT APPELLANT DID NOT SCORE "4% IN 4 MONTHS " FOR HE STATES,

"YOU WERE ASSIGNED THE SCHEME ON JAN 6 1965. WHEN TESTED
MAR 3 1965, YOU ATTAINED A SCORE OF 4%" E.G., PLAINTIFFS EXHIBIT
No. (2) PAGE (2) 2nd PAR.

THE APPELLANT CLAIMS THAT THE POST OFFICE DEPT. SUPPLIED
FALSE AND MISSLEADING INFORMATION TO THE STATE OF MARYLAND, (THE DEPT.
OF EMPLOYMENT SECURITY) AND THE CIVIL SERVICE COMMISSION. THE FACTS ARE
IRREFUTABLE, OBVIOUS.

PAR (7) APPELLANT CLAIMS AND SUBSTANTIATES, THAT THE C.S. COMMISSION
SUPPLIED MISSLEADING INFORMATION TO APPELLANT, E.G., PLAINTIFFS EXHIBIT
No. (3) LETTER DATED APRIL 21 1965, "THE APPEAL IS DENIED."

ACTUALLY APPELLANT DID NOT MAKE AN APPEAL UNTIL MAY 12 1965, E.G.,
C.S.COMM. LETTER OF JULY 27 1965, FIRST PARAGRAPH. PLAINTIFFS EXHIBIT
No. (9) PAGE (1) THE CIVIL SERVICE ADMITS THAT E.G.,

"THE APPEALS EXAMINING OFFICE ISSUED YOU A PREMATURE APPELLATE
DECISION ON APRIL 21 1965" C.S.C. LETTER OF MAY 4 1965, 2ND
PAGE 2ND PAR. PLAINTIFFS EXHIBIT No. 5, PAGE (2)

BOTH THE POST OFFICE AND THE C.S. COMMISSION FAILED TO INFORM
APPELLANT OF HIS CONSTITUTIONAL RIGHT TO APPEAL, E.G.,

"SO FAR AS THE RECORD SHOWS, YOU HAD NOT YET BEEN NOTIFIED OF YOUR
RIGHT TO APPEAL TO THE COMMISSION" C.S.C. LETTER OF MAY 4 1965,
PAGE (2) 2ND PAR, PLAINTIFFS EXHIBIT No. 5 PAGE (2)

PAR (8) DEFENDANTS MISSED THE U.S. DISTRICT COURT, THEY SAY THAT
APPELLANTS APPEAL WAS NOT ACCEPTED, WHEN IN FACT, APPELLANT DID NOT
MAKE AN APPEAL TIL MAY 12 1965, E.G.,

DEFENDANTS MOTION FOR SUMMARY JUDGEMENT, FILED APRIL 19 1966, PAGE
(2) UNDER STATEMENT OF MATERIAL FACTS, No. (8) "ON APRIL 21 1965
THE CHIEF, APPEALS EXAMINING OFFICE, CIVIL SERVICE COMMISSION,
ADVISED PLAINTIFF IT HAD NO JURISDICTION TO ACCEPT HIS APPEAL. . "

STATEMENT OF POINTS

SECTION FIVE

PAR (1) THE U.S. POST OFFICE AND THE CIVIL SERVICE COMMISSION HAVE
VIOLATED APPELLANTS RIGHTS UNDER THE "EQUAL PROTECTION OF THE LAWS"
SECTION OF ARTICLE (14) SECTION (1) OF THE CONSTITUTION.

BOOK: " WITH LIBERTY AND JUSTICE FOR ALL" AN ABRIDGEMENT OF
THE REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS 1959, U.S. GOVT.
PRINTING OFFICE, PAGE(9) E.G.,

" IN THE ASSIGNMENT OF THIS COMMISSION CONGRESS INDICATED THAT ITS
FIRST CONCERN IS WITH THE RIGHT OF CITIZENS TO VOTE AND THE RIGHT OF
ALL PERSONS TO EQUAL PROTECTION OF THE LAWS."

BOOK: "EDUCATION" 1961 U.S. COMMISSION ON CIVIL RIGHTS REPORTS, BOOK
(2) U.S. GOVT. PRINTING OFFICE, PAGE (5) E.G.,

"THE SUPREME COURT HELD THAT ENFORCED RACIAL SEGREGATION IN PUBLIC EDUCATION IS A DENIAL OF EQUAL PROTECTION UNDER THE 14TH AMENDMENT." "SEPARATE EDUCATIONAL FACILITIES" THE COURT HELD, "ARE INHERENTLY UNEQUAL." THE COURT SAID THAT "THE OPPORTUNITY FOR AN EDUCATION, WHERE THE STATE HAS UNDERTAKEN TO PROVIDE, IS A RIGHT WHICH MUST BE MADE AVAILABLE TO ALL ON EQUAL TERMS." E.G., BROWN VS BOARD OF EDUCATION, E D 347 U. S. 483, MAY 17 1954.

APPELLANT CLAIMS THAT IF AN EDUCATION IS A RIGHT TO BE MADE AVAILABLE TO ALL ON EQUAL TERMS, WOULD NOT THE SAME PRINCIPLE APPLY TO FEDERAL EMPLOYMENT. WOULD NOT PROBATIONARY EMPLOYEE SEGREGATION BE UNCONSTITUTIONAL?

PAGE (5) "THE SECOND BROWN DECISION." SUPREME COURT, "AFTER REAFFIRMING THE PRINCIPLE THAT RACIAL DISCRIMINATION IN PUBLIC EDUCATION IS UNCONSTITUTIONAL" IT SAID THAT "ALL PROVISIONS OF FEDERAL STATE OR LOCAL LAW REQUIRING SUCH DISCRIMINATION MUST YIELD TO THIS PRINCIPLE."

PAGE 10 UNDER SUMMARY, PAR. (1)
"ALL PROVISIONS OF FEDERAL, STATE OR LOCAL LAW REQUIRING OR PERMITTING RACIAL SEGREGATION IN PUBLIC SCHOOLS ARE VOID."

PAR (2) U.S. REPORTS VOL. 347 OCT TERM 1953, BROWN ET AL VS BOARD OF ED. OF TOPEKA ET AL, ARGUED DEC 9 1952, REARGUED DEC 8 1953, DECIDED MAY 17 1954. No. 1 APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF KANSAS

IT IS OBVIOUS THAT SEGREGATION DENIES EQUAL PROTECTION AND TREATMENT OF THE LAWS, UNDER THE 14TH AMENDMENT. IT IS ALSO OBVIOUS THAT PROBATIONARY EMPLOYMENT IS SEGREGATED TREATMENT, AND THEREFORE UNCONSTITUTIONAL. THE OPINION WAS DELIVERED BY CHIEF JUSTICE WARREN:

PAGE 493 "WE COME TO THE QUESTION PRESENTED, DOES SEGREGATION OF CHILDREN IN PUBLIC SCHOOLS SOLELY ON THE BASIS OF RACE, EVEN THOUGH THE PHYSICAL FACILITIES AND OTHER "TANGIBLE" FACTORS MAY BE EQUAL, DEPRIVE THE CHILDREN OF THE MINORITY GROUP OF EQUAL EDUCATIONAL OPPORTUNITIES?" "WE BELIEVE THAT IT DOES" "WE CONCLUDE THAT IN THE FIELD OF PUBLIC EDUCATION THE DOCTRINE OF "SEPARATE BUT EQUAL" HAS NO PLACE."

PAR (3) CONGRESSIONAL QUARTERLY R328, SUPREME COURT MAY 17 1954 BROWN VS BOARD OF ED. TOPEKA KANSAS. THE SUPREME COURT HELD THAT "ENFORCED SEGREGATION IN A PUBLIC EDUCATION WAS A DENIAL OF THE

EQUAL PROTECTION OF THE LAWS GUARENTEED UNDER THE 14 TH AMENDMENT. OVERTURNING THE HERETOFORE CONSTITUTIONAL SEPARATE BUT EQUAL DOCTRINE." "SEPARATE EDUCATIONAL FACILITIES ARE INHERENTLY UNEQUAL"

APPELLANT SUGGESTS THAT SEPARATE PROBATIONARY FACILITIES ARE INHERENTLY UNEQUAL.

PAR (4) U.S. REPORTS VOL 371 OCT TERM 1962, WILLIAMS VS ZUCKERT C.A. 1699-60, PER CURAM, DANIEL A. WILLIAMS VS ZUCKERT, SEC. OF AF ET AL, CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE DIST OF COL CIRCUIT, U.S. SUPREME COURT No. 133, ARGUED DECEMBER 13 1962, DECIDED JAN. 14 1963, PAGE 534 JUSTICE DOUGLAS J. DISSENTING E.G.,

"CONFRONTATION AND CROSS EXAMINATION ARE, AS I UNDERSTAND THE LAW, VITAL WHEN ONES EMPLOYMENT RIGHTS ARE INVOLVED. PETITIONER IS NOT MERELY BEING "DENIED" THE OPPURTUNITY TO WORK AT ONE ISOLATED AND SPECIFIC MILITARY INSTALLATION" "THE STIGMA NOW ATTACHED TO HIM WILL FOLLOW HIM, WHATEVER EMPLOYMENT HE SEEKS. THE REQUEST OF DUE PROCESS PROVIDED BY THE FIFTH AMENDMENT SHOULD PROTECT HIM AGAINST THIS HARSH RESULT BY GIVING HIM THE SAME RIGHT TO CONFRONT HIS ACCUSERS AS HE WOULD HAVE IN A CRIMINAL TRIAL"

PAGE 535 "PETITIONER HAS BEEN DEPRIVED OF HIS JOB AND PERMANENTLY STIGMATIZED WITHOUT BEING CONFRONTED BY HIS ACCUSERS. . "

APPELLANT HAS BEEN DEPRIVED OF HIS JOB AND PERMANENTLY STIGMATIZED WITHOUT BEING CONFRONTED BY HIS ACCUSERS.

WILLIAMS VS ZUCKERT, PER CURIAM, WILLIAMS VS ZUCKERT SEC. OF AF ET AL ON PETITION FOR REHEARING, No. 133 DECIDED APRIL 22 1963, REHEARING GRANTED, CAUSE REMANDED TO U. S. DISTRICT COURT.

WILLIAMS VS ZUCKERT, No. 133, OCT. TERM 1962, THE SUPREME COURT OF THE UNITED STATES "REMANDED TO THE U.S.DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, C.A. 1699-60 FOR FURTHER PROCEEDINGS." JAN 14 1963, AS AMENDED BY ORDER OF APRIL 22, 1963, WILLIAM VS ZUCKERT 372 U S 765 1963

WILLIAMS VS ZUCKERT, C.A. 1699-60, AUG 16 1965, U. S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, JUDGE CORCORAN. " CAUSE BE AND HEREBY IS, REMANDED TO THE C.S.COMMISSION FOR FURTHER PROCEEDINGS CONSISTANT WITH THIS COURTS FINDINGS OF FACT AND CONCLUSIONS OF LAW."

"RIGHT TO CONFRONT ACCUSERS GIVEN EMPLOYEES IN NEW RULING" FED. SPOTLIGHT, W.STAR, MAY 5 1966. "THE CIVIL SERVICE COMMISSION HAS ISSUED REGULATIONS GIVING FEDERAL EMPLOYEES IN ADVERSE ACTION APPEAL CASES THE RIGHT TO CONFRONT THEIR ACCUSERS."

THE APPELLANT WAS DENIED THE RIGHT TO CONFRONT HIS ACCUSERS.

PAR (5) WALKER, 14 N.Y. 2 ND 901, LOOK MAGAZINE PAGE 37, OCT 4 1966, THIS IS THE CONCLUSION OF THE APPELLATE DECISION: "THE EVIDENCE LEADS IRRESISTIBLY TO THE CONCLUSION THAT THIS INTENTIONAL DISCRIMINATION AND PROSECUTION WAS IN RETALIATION FOR DEFENDANTS PUBLIC EXPOSURE OF CORRUPTION. . . . IN VIEW OF THE PRIOR PROCEEDINGS HEREIN, THE EVIDENCE ADDUCED BY DEFENDANT AT THE PRETRIAL HEARING BELOW REQUIRED DISMISSAL OF THE PROSECUTION ON THE GROUND THAT DEFENDANT WAS DEPRIVED OF HER CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS."

APPELLANT MAINTAINS THAT HE TOO WAS DEPRIVED OF THE RIGHT TO EQUAL PROTECTION OF THE LAWS.

PAR (6) WASH. DAILY NEWS, NOV 22 1966, PAGE 62. "COURT DELAYS RULING ON STEWARDESSES" AGE LIMIT AND MARRIAGE BAN ARE ISSUES. "TEN OF THE NATIONS AIRLINES YESTERDAY WON A COURT ORDER POSTPONING FOR 10 DAYS A RULING BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON WHETHER IT IS LEGAL TO RESTRICT STEWARDESSES JOBS TO WOMEN." "STEWARDESS UNIONS URGED THE COMMISSION TO FIND THAT THE AIRLINES MARRIAGE BAN AND AGE LIMIT FOR THEIR JOBS BE FOUND A VIOLATION OF THE 1964 CIVIL RIGHTS ACTS EQUAL OPPORTUNITY PROVISIONS"

THIS CAUSE IS NOW PENDING IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, JUDGE LEONARD P. WALSH.

APPELLANT ARGUES THAT THE FEDERAL GOVERNMENT MAY NOT DEPRIVE HIM OF EQUAL PROTECTION, WITH EMPLOYEES WHO HAVE ACHIEVED CIVIL SERVICE STATUS, BY CLASSING HIM AS A PROBATIONARY EMPLOYEE, AND THEREBY CLAIMING THAT APPELLANT HAS NO RIGHTS.

PAR (7) THE APPELLANT CLAIMS THAT THE POST OFFICE DENIED HIM HIS CONSTITUTIONAL RIGHTS TO EQUAL OPPORTUNITY BY DESIGNATING HIM A PROBATIONARY EMPLOYEE. E. G., PLAINTIFFS COURT RECORD. PLAINTIFFS ARGUMENT IN SUPPORT OF A CONSTITUTIONAL RULING ON PROBATION, FILED MAY 3 1966. SEE ALSO DEFENDANTS EXHIBIT No. 3 COURT RECORD, COPIES OF RELEVANT POSTAL REGULATIONS HAVE BEEN FILED. THEY ARE, E.G.,

333.532, 333.543, 333.553D, 333.554, 333.581, 746.4 , 717.312D
717.342 C

ALTHOUGH APPELLANT WAS GRANTED A CAREER APPOINTMENT, WITH ONE YEAR PROBATION E.G., PLAINTIFFS EXHIBIT 14, POST OFFICE LETTER OF

NOV 4 1964. HE WAS NOT GRANTED THE RIGHT TO APPEAL BY THE POST OFFICE BECAUSE HE HAD BEEN EMPLOYED LESS THAN 6 MONTHS, DEFENDANTS EXHIBITS No. 3 COURT RECORD, PAGE 746.4 (A) ELIGIBILITY TO APPEAL.

PAR (8) ETHICS, THE FEDERAL SPOTLIGHT, W. STAR NOV 24 1965.

"WITHIN 90 DAYS AFTER THEIR AGENCIES PROMULGATE CODE OF ETHICS REGULATIONS BASED ON THE CIVIL SERVICE COMMISSIONS NEW DIRECTIVE, EACH FEDERAL AND POSTAL EMPLOYEE WILL RECEIVE A COPY OF THEIR AGENCIES REGULATIONS."

IT IS OBVIOUS THAT EACH AGENCIES REGULATIONS WILL DIFFER THEREFORE A PROBATIONARY EMPLOYEE STILL CANNOT RECEIVE EQUAL TREATMENT.

HIRING OF EX-CONVICTS, THE FEDERAL SPOTLIGHT, W. STAR AUG 18 1966
"CIVIL SERVICE COMMISSION CHAIRMAN JOHN MACY HAS ANNOUNCED A NEW GOVERNMENT HIRING POLICY TO HIRE FORMER CONVICTS WITH GOOD PRISON RECORDS WHO ARE DEEMED "GOOD RISKS" FOR REHABILITATION."

APPELLANT CLAIMS THAT HE DOES NOT EVEN POSSES EQUAL RIGHTS WITH AN EX-CONVICT, YET HE HAS NOT BEEN IN PRISON.

APPEALS SYSTEM OVERHAUL SOUGHT TO BOLSTER RIGHTS OF WORKERS, FEDERAL SPOTLIGHT FEB 7 1967 W. STAR. "AN OVERHAUL OF THE GOVERNMENTS APPEALS SYSTEM TO STRENGTHEN EMPLOYEE APPEAL RIGHTS WAS PROPOSED TODAY BY THE C. S. COMMISSION LEGAL DIVISION."

APPELLANT QUESTIONS WHETHER THE C. S. COMMISSION LEGAL DIVISION HAS GIVEN ANY THOUGHT TO THE PROBATIONARY EMPLOYEES RIGHTS

PRESIDENT MOVES TO DETAIL RIGHTS OF U. S. EMPLOYEES. THE FEDERAL DIARY W. POST MAR 3 1967. "THE JOHNSON ADMINISTRATION IS SEARCHING FOR AN EFFECTIVE AND APPROPRIATE VEHICLE TO DEMONSTRATE ITS CONCERN FOR THE CONSTITUTIONAL RIGHTS OF THE 2.8 MILLION FEDERAL EMPLOYEES."

IT IS CLEARLY OBVIOUS THAT THE FEDERAL EMPLOYEE LACKS HIS FULL CONSTITUTIONAL RIGHTS.

SET UP MAPPED FOR GRIEVANCES. THE FEDERAL DIARY, W. POST, MAR 16 1967
"FEDERAL EMPLOYEES WOULD BE ENCOURAGED TO DISCUSS THEIR GRIPEs AND GRIEVANCES ON A CONFIDENTIAL BASIS WITH A COUNSELOR IN THEIR PERSONNEL OFFICES UNDER A PLAN ABOUT TO SURFACE AT THE CIVIL SERVICE COMMISSION."

APPELLANT DID NOT HAVE RECOURSE TO A PERSONNEL COUNSELOR.

STATEMENT OF POINTS

SECTION SIX

PAR (1) THE POST OFFICE AND THE CIVIL SERVICE COMMISSION HAVE

VIOLATED APPELLANTS RIGHT TO:"BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESS AGAINST HIM ; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE." ARTICLE (6) OF THE BILL OF RIGHTS, AND THE DUE PROCESS SECTION OF THE (14 TH) AMENDMENT, AND IN ADDITION, THE (9TH) AMENDMENT TO THE CONSTITUTION, WHICH STATES "THE ENUMERATION IN THE CONSTITUTION OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHER RETAINED BY THE PEOPLE.

"CIVIL SERVICE STRENGTHENS RULES ON U. S. EMPLOYEES ETHICAL CONDUCT" THE FED. SPOTLIGHT @ OCT 10 1965. "PROMPT PAYMENT OF DEBTS AND STRONG RULES AGAINST ANY GAMBLING ON GOVERNMENT PROPERTY ARE AMONG THE NEW PROVISIONS IN THE CIVIL SERVICE COMMISSIONS NEW STANDARDS FOR ETHICAL CONDUCT AMONG GOVERNMENT EMPLOYEES."

APPELLANT REFUSED TO PARTICIPATE IN THE PAY-CHECK LOTTERY, WHILE EMPLOYEED AT THE POST OFFICE, THE LOTTERY WAS OPERATED BY THE POSTAL SUPERVISORS, E.G., AFFIDAVIT TO PRESIDENT JOHNSON, DATED MARCH 11 1965, ENCLOSURE D OF CIVIL SERVICE APPEAL.

PAR (2) " ACTION PROGRAM TO END JOB BIAS PUT IN EFFECT BY CIVIL SERVICE" FED. SPOTLIGHT, W. STAR NOV 25 1965. " THE C. S. COMMISSION HAS ISSUED STRONG REGULATIONS FOR CARRING OUT THE NEW RESPONSIBILITIES GIVEN IT BY PRESIDENT JOHNSON TO END RACIAL AND OTHER FORMS OF DISCRIMINATION IN GOVERNMENT PROMOTIONS AND APPOINTMENTS." " (2) AGENCIES MUST CONDUCT A CONTINUING CAMPAIGN TO ERADICATE EVERY FORM OF PREJUDICE OR DISCRIMINATION BASED UPON RACE, CREED, COLOR OR NATIONAL ORIGIN FROM PERSONNEL POLICIES PRACTICES AND WORKING CONDITIONS."

THE APPELLANT WAS DISCRIMINATED AGAINST BY THE CATHOLIC POSTAL EMPLOYEES BECAUSE HE IS A SECULARIST. APPELLANT COULD OBTAIN NO REDRESS OR RELIEF FROM THE POST OFFICE, THE C. S. COMMISSION OR THE PRESIDENTS

COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY. E.G., PLAINTIFFS EXHIBIT
No. 10 PAGE (1) (2) AND (3)

"CIVIL SERVICE GETS RESPONSIBILITIES FOR ENFORCING NON-BIAS IN
HIRING." W. STAR, THE FEDERAL SPOTLIGHT. "THE PRESIDENT ISSUED AN
EXECUTIVE ORDER No. 11246 THAT ABOLISHES THE PRESIDENTS COMMITTEE ON
EQUAL EMPLOYMENT OPPORTUNITY, WHICH HAD COORDINATED THE PROGRAM TO ABOLISH
DISCRIMINATION BASED ON RACE CREED COLOR OR NATIONAL ORIGIN, IT PLACES
THE PROGRAM UNDER THE CIVIL SERVICE COMMISSION."

THE PRESIDENTS COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY COULD NOT ASSIST
APPELLANT BECAUSE HE COULD PROVIDE NO "EVIDENCE" E.G., PLAINTIFFS EXHIBIT
No. 10 PAGE 3. APPELLANT COULD NOT SUPPLY EVIDENCE BECAUSE HE HAD NO
RIGHTS TO DUE RECOURSE UNDER THE PROBATIONARY SYSTEM OF EMPLOYMENT.
PRESIDENT KENNEDY ISSUED EXECUTIVE ORDER No. 10987 IN 1962. THE ORDER
GIVES GOVERNMENT EMPLOYEES THE RIGHT OF APPEAL WITHIN THEIR AGENCIES.

APPELLANT WAS NOT ADVISED OF HIS RIGHTS UNDER THIS ORDER. NOR WAS
HE TOLD THAT A PROBATIONARY EMPLOYEE HAD NO RIGHTS UNDER EXECUTIVE ORDER
No. 10987.

PAR (3) EXECUTIVE ORDER No. 11246, 30 FEDERAL REGISTER 12319

"EQUAL EMPLOYMENT OPPORTUNITY" PART (1) NONDISCRIMINATION IN
GOVERNMENT EMPLOYMENT. SECTION 101, IT IS THE POLICY OF THE FEDERAL
GOVERNMENT OF THE U. S. TO PROVIDE EQUAL OPPORTUNITY IN FEDERAL
EMPLOYMENT FOR ALL QUALIFIED PERSONS, TO PROHIBIT DISCRIMINATION IN
EMPLOYMENT BECAUSE OF RACE, CREED, COLOR OR NATIONAL ORIGIN."

SECTION 104 "THE C. S. COMMISSION SHALL PROVIDE FOR THE
PROMPT, FAIR, AND IMPARTIAL CONSIDERATION OF ALL COMPLAINTS OF
DISCRIMINATION IN FEDERAL EMPLOYMENT ON THE BASIS OF RACE CREED COLOR
OR NATIONAL ORIGIN." "PROCEDURES FOR THE CONSIDERATION OF COMPLAINTS
SHALL INCLUDE AT LEAST ONE IMPARTIAL REVIEW WITHIN THE EXECUTIVE DEPT.
OR AGENCY AND SHALL PROVIDE FOR APPEAL TO THE C. S. COMMISSION."

SECTION 105 "THE CIVIL SERVICE SHALL ISSUE SUCH REGULATIONS
ORDERS AND INSTRUCTIONS AS IT DEEMS NECESSARY AND APPROPRIATE TO
CARRY OUT ITS RESPONSIBILITIES UNDER THIS PART, AND THE HEAD OF EACH
EXECUTIVE DEPARTMENT AND AGENCY SHALL COMPLY WITH THE REGULATIONS
ORDERS, INSTRUCTIONS ISSUED BY THE COMMISSION UNDER THIS PART."

EXECUTIVE ORDER No.11246 DOES NOT INDICATE WHETHER A PROBATIONARY EMPLOYEE IS CONSIDERED A FEDERAL EMPLOYEE, NOR DOES IT INDICATE IF IT APPLIES TO EMPLOYEES SERVING A PROBATIONARY PERIOD, IN ORDER TO REACH CIVIL SERVICE STATUS.

PAR (4) "CHAMBER URGES SOCIAL SECURITY FOR U.S. AND POSTAL EMPLOYEES" FEDERAL SPOTLIGHT, W. STAR DECEMBER 29 1965 .
"CROSS EXAMINATION RIGHTS" THE U.S. COURT OF CLAIMS HAS HELD THAT AN INTERNAL REVENUE SERVICE EMPLOYEE WAS DISCHARGED IMPROPERLY BECAUSE HE WAS DENIED THE RIGHT TO CROSS EXAMINE" THE COURT HELD THAT A PERSONAL INVITATION TO EITHER OFFICIAL OF THE FEDERAL GOVERNMENT "WOULD BE SIMPLY AN EXERCISE IN FUTILITY." HANIFAN VS U.S. No.92-63

APPELLANT HAS FOUND THAT INQUIRIES TO THE POST OFFICE , NAMELY TO POSTMASTER EGBERT F. TINGLEY WERE INDEED "AN EXERCISE IN FUTILITY" POSTMASTER TINGLEY WOULD NEITHER TALK WITH, NOR ASSIST APPELLANT IN ANY MANNER.

STATEMENT OF POINTS

SECTION SEVEN

PAR (8) THE U. S. DISTRICT COURT ERRED IN DISMISSING APPELLANTS CAUSE C. A. 2221-65, ON DEFENDANTS MOTION FOR SUMMARY JUDGEMENT, ON MAY 3 1966. THE ORDER READS IN PART . . . "THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT DEFENDANTS ARE ENTITLED TO JUDGEMENT AS A MATTER OF LAW. . ." JUDGE JOSEPH C. McGARRAGHY

JUDGE McGARRAGHY ERRED IN DISMISSING PLAINTIFFS CAUSE, C. A. 2221-65, WHILE A MOTION FOR A CONSTITUTIONAL RULING WAS PENDING . THEREFORE HIS RULING WAS PREMATURE. PLAINTIFFS MOTION FOR A RULING, INDICATING THAT THE PRACTICE OF PROBATIONARY EMPLOYMENT AS UTILIZED BY THE U. S. CIVIL SERVICE COMMISSION AND THE U. S. POST OFFICE IS UNCONSTITUTIONAL. MOTION WAS DOCKETED BY FIAT APRIL 26 1966 E. G.,

COURT RECORD

JUDGE McGARRAGHY ERRED IN DENYING APPELLANT PERMISSION TO FILE APPEAL WITHOUT PREPAYMENT OF COSTS. E.G., MAY 19 1966 COURT RECORD

JUDGE McGARRAGHY ERRED IN NOT GRANTING TO APPELLANT A MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE HIS APPEAL TO THE U. S. COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT. EG, COURT RECORD, MAY 24 1966. MOTION WAS DENIED JUNE 3 1966.

JUDGE McGARRAGHY ERRED IN CUTTING OFF DEFENDANTS ATTORNEYS TESTIMONY E.G., TR. PAGE 3 COURT RECORD. JUDGE McGARRAGHY EXHIBITED A BIAS TOWARD DEFENDANTS FEMALE ATTORNEY, AND A HOSTILITY TOWARD PLAINTIFF, E. C. ENTIRE TRANSCRIPT. JUDGE McGARRAGHY ERRED IN NOT ORDERING HIS COURT REPORTER TO PROVIDE A VERBATIM TRANSCRIPT TO PLAINTIFF, OCT 12 1966.

JUDGE McGARRAGHY ERRED IN DISMISSING PLAINTIFFS CAUSE, THE DEFENDANTS STATE, IN THEIR MOTION FOR SUMMARY JUDGEMENT, UNDER STATEMENT OF MATERIAL FACTS, PAGE 3, UNDER 11, "HE DID NOT BRING HIS APPEAL WITHIN THE PURVIEW OF CIVIL SERVICE COMMISSION REGULATIONS" PAGE 3 UNDER PAR 12 THE CIVIL SERVICE STATES THAT IT WAS "UNABLE TO FIND ANY STATEMENT OF FACTS OR CIRCUMSTANCES SHOWING A BASIS ON WHICH THE COMMISSION COULD PROPERLY JURISDICTION FOR APPELLATE REVIEW..."

THE C. S. COMM. STATES IN ITS LETTER OF JULY 27 1965, PLAINTIFF EXHIBIT 9 PAGE 2 "YOUR APPEAL IS BEYOND THE COMMISSIONS AUTHORITY FOR ADJUDICATION UNDER SECTION 315.806 OF THE C. S. REGULATIONS."

OBVIOUSLY THEN, THE CIVIL SERVICE ADMITS THAT IT COULD NOT RULE, FOR A LACK OF AUTHORITY, HOWEVER, JUDGE McGARRAGHY DID NOT LACK THE AUTHORITY TO RULE. BEFORE HIM WAS A MOTION TESTING THE CONSTITUTIONALITY OF PROBATIONARY EMPLOYMENT. HE CHOSE TO IGNORE THE MOTION, AND HE THEREFORE ERRED IN HIS ROLE AS THE PRESIDING JUDGE, IN AS MUCH AS HE POSSESSED THE AUTHORITY TO RULE ON CONSTITUTIONAL MATTERS.

STATEMENT OF POINTS

SECTION EIGHT

PAR (1) THE U.S. POST OFFICE VIOLATED APPELLANTS RIGHTS UNDER THE FIRST

AMENDMENT OF THE BILL OF RIGHTS, UNDER THE "FREE EXERCISE" AND THE "ESTABLISHMENT" CLAUSES. THE APPELLANTS SEPARATION VIOLATED EXECUTIVE ORDER 10925 SECTION 203, UNDER RELIGIOUS DISCRIMINATION. UNFORTUNATELY THE PRESIDENTS COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY NEEDED "EVIDENCE" OF RELIGIOUS DISCRIMINATION. THE APPELLANT HAVING BEEN SEPARATED, AND POSSESSING NO RIGHTS, COULD NOT OBTAIN EVIDENCE. THE APPELLANT CLAIMED RELIGIOUS DISCRIMINATION, UNDER C. S. REG. 4.2, BUT THE CIVIL SERVICE IGNORED HIS CLAIM, E.G., PLAINTIFFS COMPLAINT BRIEF, COMPLAINT 4 D AND SUPPORT 4 D.

APPELLANT IS A BELIEVER IN SECULARISM. IN REPLY TO THE INCESSANT CHALLENGES TO HIS BELIEFS, HE RESPONDED BY DEFEATING THE CATHOLICS IN A DISCUSSION, AT THE HYATTSVILLE, POST OFFICE. PLEASE KEEP IN MIND THAT APPELLANT DID NOT INITIATE THE DISCUSSION OF RELIGION. IT IS OBVIOUS THAT CATHOLICS DO NOT LIKE TO LOSE DISCUSSIONS, BECAUSE THEY BECAME VINDICTIVE,

PAR (2) SCHOOL DISTRICT OF ABINGTON TOWNSHIP, ET AL VS SCHEMPP ET AL SUPREME COURT, JUNE 17, 1963 MR. JUSTICE CLARK SPEAKS ON THE FIRST AMENDMENT: " THE DISTINCTION BETWEEN THE TWO CLAUSES IS APPARENT, A VIOLATION OF THE FREE EXERCISE CLAUSE IS PREDICATED ON COERSION WHILE THE ESTABLISHMENT CLAUSE VIOLATION NEED NOT BE SO ATTENDED."

SUPERIOR COURT OF CINCINNATI, FEB 1870, JUDGE ALPHONSO TAFT: "ABSOLUTE EQUALITY BEFORE THE LAW OF ALL RELIGIOUS OPINIONS AND SECTS" " THE GOVT. IS NEUTRAL, AND, WHILE PROTECTING ALL, IT PREFERS NONE, AND IT DISPARAGES NONE" E.G. PAGE 11 U.S. SUPREME COURT, Nos. 142 AND 119

QUOTE FROM JUSTICE BRADLEY, "THE CONSTITUTION WAS EVIDENTLY FRAMED AND ADOPTED BY THE PEOPLE OF THE UNITED STATES WITH THE FIXED DETERMINATION TO ALLOW ABSOLUTE RELIGIOUS FREEDOM EQUALITY, AND TO AVOID ALL APPEARANCE EVEN OF A STATE RELIGION, OR A STATE ENDORSEMENT OF ANY PARTICULAR CREED OR RELIGIOUS SECT." E.G., PAGE 29 SCHEMPP DECISION.

CHIEF JUSTICE JEREMIAH S. BLACK IS QUOTED, PAGE 76. "THE MANIFEST OBJECT OF THE MEN WHO FRAMED THE INSTITUTIONS OF THIS COUNTRY WAS TO HAVE A STATE WITHOUT RELIGION, AND A CHURCH WITHOUT POLITICS ."

IT IS DIFFICULT FOR THE APPELLANT TO UNDERSTAND WHY THE POST OFFICE

WOULD PERMIT REGULAR EMPLOYEES TO BADGER AND HARASS A PROBATIONARY EMPLOYEE ON ACCOUNT OF HIS RELIGION OF SECULARISM, ESPECIALLY SO SINCE THE GOVERNMENT SHOULD BE ABSOLUTELY IMPARTIAL.

STATEMENT OF POINTS

SECTION NINE

PAR (1) THE POST OFFICE VIOLATED APPELLANTS RIGHTS BY INVITING HIM TO PARTICIPATE IN VIOLATIONS OF POSTAL REGULATIONS E.G., LOTTERY, DRINKING, RUBBERBAND SHOOTING, HORSEPLAY, HOMOSEXUALITY. APPELLANT CLAIMS ILLEGAL INTIMIDATION AND COERSION AT THE HANDS OF POSTAL SUPERVISORS AND EMPLOYEES. E.G., CIVIL SERVICE APPEAL, PAGE 10 THROUGH 10B, ALSO SEE AFFIDAVIT TO PRESIDENT JOHNSON, DATED MARCH 11, 1965, CIVIL SERVICE ENCLOSURE D.

"DODD AIDS FOLLOWED IKES ETHICS CODE" THE WASHINGTON MERRY GO ROUND W. POST MARCH 16 1967 "CODE OF ETHICS FOR GOVT. SERVICE" " AN ETHICS CODE WAS PASSED BY THE DWIGHT D. EISENHOWER ADMINISTRATION, BOTH THE SENATE AND THE HOUSE PASSED THE CODE, JULY 11 1958. IT NOT ONLY SET UP A CODE OF ETHICS FOR GOVERNMENT SERVICE BUT CLEARLY SPECIFIED THAT "ALL GOVERNMENT SERVANTS MUST EXPOSE CORRUPTION WHEREVER DISCOVERED."

OBVIOUSLY THEN, WHEN APPELLANT MADE AN INFORMAL COMPLAINT TO HIS IMMEDIATE SUPERVISOR, HE WAS COMPLYING WITH AN ETHICS CODE THAT HE WAS NOT CONSCIOUSLY AWARE OF. FURTHERMORE THERE SHOULD HAVE BEEN NO NEED FOR A PROBATIONARY EMPLOYEE TO JEOPARDIZE HIS EMPLOYMENT BY MAKING AN INFORMAL COMPLAINT TO HIS IMMEDIATE SUPERVISOR, MR. R. T. LUSBY. IF THE ETHICS CODE HAD BEEN OBSERVED AND ENFORCED BY THE POSTMASTER AND HIS IMMEDIATE SUBORDINATES, THERE WOULD HAVE BEEN NO NEED FOR APPELLANT TO MAKE AN INFORMAL COMPLAINT.

SUMMARY OF ARGUMENT

(1) FREE SPEECH, APPELLANT ARGUES THAT HE WAS DISMISSED FOR REASONS OTHER THAN FAILURE OF A TEST. THE FAILURE OF A TEST, BY ANY SCORE DOES NOT MERIT PREJUDICE, VINDICTIVENESS AND STIGMATIZATION. APPELLANT SPOKE AGAINST RELIGION WHILE EMPLOYED BY THE POST OFFICE BECAUSE HIS BELIEFS WERE DISPARAGED.

(2) LIBERTY, APPELLANT ARGUES THAT HE WAS DENIED THE PRIVILEGE TO WORK AT OTHER POST OFFICE POSITIONS AND OTHER GOVERNMENT POSITIONS BECAUSE OF THE POST OFFICE'S DISREGARD OF EMPLOYEES RIGHTS.

(3) PRIVILEGES AND IMMUNITIES, APPELLANT ARGUES THAT HE HAS BEEN DENIED THE PRIVILEGES TO WORK IN THREE OTHER GOVERNMENT POSITIONS WHICH HE IS QUALIFIED FOR. APPELLANT ARGUES THAT EGBERT F. TINGLEY, POSTMASTER HYATTSVILLE, MD SHOULD NOT BE PERMITTED TO CLAIM IMMUNITY TO BE VINDICTIVE.

(4) DUE PROCESS, APPELLANT ARGUES THAT HE WAS DENIED DUE PROCESS, IN THAT AS A PROBATIONARY EMPLOYEE HE HAD NO STATUTORY RIGHTS, THE POST OFFICE DENIED HIM APPEAL RIGHTS AND THE CIVIL SERVICE COMMISSION ALLEGES THAT IT HAD NO AUTHORITY TO INTERCEDE.

(5) EQUAL PROTECTION OF LAWS, APPELLANT ARGUES THAT AS A PROBATIONARY EMPLOYEE HE WAS DENIED THE SAME LAWFUL PROTECTION THAT A REGULAR GOVERNMENT EMPLOYEE RECEIVES, HE ALSO ARGUES THAT A PROBATIONARY EMPLOYEE DOES NOT POSSESS THE SAME RIGHTS AS THE ORDINARY CITIZEN.

(6) ARTICLE 6 AND 9, BILL OF RIGHTS, APPELLANT WAS DENIED THE RIGHT TO CONFRONT HIS ACCUSERS, AND THE RIGHT TO OBTAIN EVIDENCE, AND THE RIGHT TO KNOW THE NATURE, AND CAUSE OF THE ACCUSATION.

SUMMARY OF ARGUMENT

(7) APPELLANT ARGUES THAT JUDGE McGARRAGHY ERRED IN NOT RULING ON A CONSTITUTIONAL MOTION BEFORE HIM, BEFORE HE RULED ON DEFENDANTS MOTION FOR SUMMARY JUDGEMENT.

(8) FREE EXERCISE AND ESTABLISHMENT CLAUSES, APPELLANT ARGUES THAT THE POST OFFICE ERRED IN PERMITTING ITS CATHOLIC EMPLOYEES TO ATTACK, DISPARAGE, AND COERCE APPELLANT WHILE HE WAS PERFORMING HIS DUTIES. APPELLANT ALSO ARGUES THAT THE POST OFFICE SHOULD NOT BE PERMITTED TO FAVOR CATHOLIC EMPLOYEES, UNDER THE ESTABLISHMENT CLAUSE.

(9) THE POST OFFICE VIOLATES ETHICS CODE, APPELLANT ARGUES THAT POSTAL EMPLOYEES VIOLATED GOVERNMENTAL ETHICS CODES, AND POSTAL REGULATIONS AT THE HYATTSVILLE POST OFFICE DISPATCH ANNEX SECTION.

ARGUMENT

(1) IT IS OBVIOUS THAT THE POST OFFICE VIOLATED APPELLANTS FREE SPEECH RIGHTS, USING AS A PRETEXT, THE FAILURE TO PASS AN EXAM. IT IS ALSO OBVIOUS THAT APPELLANT WAS BADGERED, BELITTLED AND ANTAGONIZED UNTIL

IT WAS NECESSARY FOR HIM TO DEFEND HIS ETHICS AND SECULAR BELIEFS. IT IS UNFORTUNATE THAT CATHOLICS FEEL THE NEED TO SEEK REVENGE WHEN THEY ARE DEFEATED IN OPEN DISCUSSION. APPELLANT ARGUES THAT THE POST OFFICE MAY NOT DEPRIVE AN EMPLOYEE OF HIS RIGHT TO SPEAK, HIS RIGHT TO DEFEND HIS BELIEFS WHEN HE HAS BEEN ATTACKED, E.G., CHIEF JUSTICE WARREN, BOND VS. FLOYD, PAGE 14 OF COURT DECISION. E.G., BRIEF PAGE 8 PAR (1)

THE APPELLANT MAY NOT BE DEPRIVED OF THE RIGHT TO SPEAK, WITHOUT DUE PROCESS. REV. ADAMS VS. MONTGOMERY COUNTY COUNCEL . E.G., BRIEF PG. 8 PAR 2

(2) SINCE APPELLANT WILL BE STIGMATIZED BY THE POST OFFICES VINDICTIVE LETTER OF SEPARATION, HE WILL BE VICTIMIZED, AND THEREFORE DENIED THE LIBERTY TO SEEK FURTHER GOVERNMENT EMPLOYMENT, APPELLANTS EXHIBIT 15. APPELLANT ARGUES THAT HIS LETTER OF SEPARATION WILL ACCOMPANY FUTURE REQUESTS FOR GOVERNMENT EMPLOYMENT. APPELLANT ARGUES THAT THE PRESENT POSTMASTER GENERAL, LAWRENCE O'BRIEN WANTS A COMPREHENSIVE CHANGE IN ADMINISTRATIVE PROCESSES, AT THE POST OFFICE. HE SAYS OF THE POST OFFICE "...A RESTRICTIVE JUNGLE OF LEGISLATION AND CUSTOM. . " BRIEF PG 8 SEC2 PAR1 APPELLANT ARGUES THAT A PROBATIONARY EMPLOYEE COULD NOT POSSIBLY BE ACCORDED LIBERTY AT THE POST OFFICE.

(3) APPELLANT STATES AS FACT, THAT HE QUALIFIES FOR THE POSITIONS OF GUARD, MESSENGER, MAIL CARRIER AND MAIL HANDLER, BRIEF PG 10 SEC 3 PAR 1 HOWEVER, DUE TO THE CALCULATED REVENGE OF POSTMASTER TINGLEY, HE IS BEING DENIED THE PRIVILEGE TO WORK IN GOVERNMENT SERVICE. APPELLANT ARGUES

ARGUMENT

THAT EVEN AS A POSTAL PROBATIONARY EMPLOYEE, HE SHOULD HAVE BEEN IMMUNE FROM HARRASSMENT , APPELLANT FURTHER ARGUES, THAT MR TINGLEY POSTMASTER, HYATTSVILLE, MARYLAND, MUST NOT BE GRANTED IMMUNITY FROM PROSECUTION ON THE GROUNDS THAT HE IS A GOVERNMENT OFFICIAL, E.G.,

BRIEF PG 10 SECTION 3 PAR 2 JUDGE LEARNED HAND

(4) APPELLANT ARGUES THAT HE WAS DENIED ACCESS TO DUE PROCESS, FROM THE POST OFFICE AND THE CIVIL SERVICE COMMISSION. AFTER BEING SEPARATED FROM THE POST OFFICE, APPELLANT WAS DENIED PERMISSION, TO SEE OR TALK TO POSTMASTER TINGLEY. APPELLANT WAS NOT ADVISED OF HIS RIGHTS NOR WAS HE INFORMED THAT HE POSSESSED NO STATUTORY RIGHTS AS A PROBATIONARY EMPLOYEE. E.G., COURT RECORD DEFENDANTS MOTION FOR SUMMARY JUDGEMENT, UNDER INTRODUCTION. THE CIVIL SERVICE STATED THAT IT DID NOT HAVE "JURISDICTION" IN ITS LETTER OF APRIL 21 1965, E.G., PLAINTIFFS EXHIBIT 3; 4 TH PAR. IN A LATER LETTER THE CIVIL SERVICE STATES" BEYOND THE COMMISSIONS AUTHORITY FOR ADJUDICATION" E.G., PLAINTIFFS EXHIBIT 9 PAGE 2. APPELLANT ARGUES THAT IT WAS NOT NECESSARY NOR LEGALLY POSSIBLE FOR THE C. S. COMMISSION TO HAVE ISSUED TO PLAINTIFF, A DENIAL OF APPEAL. E.G., C. S. LETTER OF APRIL 21 1965, PLAINTIFFS EXHIBIT 3, AT A LATER DATE THE C. S. COMM. ADMITS THAT PLAINTIFF HAD NOT BEEN ADVISED OF HIS APPEAL RIGHTS, AND HAD NOT PRESENTED AN APPEAL, E.G., CIVIL SERVICE LETTER OF MAY 4 1965, SECOND PAGE 2ND PAR., PLAINTIFFS EXHIBIT 5.

(5) APPELLANT ARGUES THAT HE WAS DENIED EQUAL PROTECTION OF THE LAWS, IN THAT A PROBATIONARY EMPLOYEE DOES NOT POSSESS RIGHTS EQUAL TO A REGULAR C. S. EMPLOYEE. A PROBATIONARY EMPLOYEE IS LIMITED TO C. S. REGULATION 315.806 WITHIN WHICH TO APPEAL. E.G., C. S. LETTER OF MAY 4

ARGUMENT

1965, PAGE 1 3RD PAR. PLAINTIFF EXHIBIT 5 PAGE (1). APPELLANT FURTHER ARGUES THAT POST OFFICE REGULATIONS SHOW THAT PROBATIONARY EMPLOYEES DO NOT POSSES RIGHTS COMPARABLE TO A REGULAR EMPLOYEE, E.G., DEFENDANTS EXHIBITS No. 3. APPELLANT ARGUES THAT THE FEDERAL GOVT. LIMITS A CITIZENS RIGHTS AS A CONDITION TO EMPLOYMENT, "PROBATIONARY EMPLOYMENT."

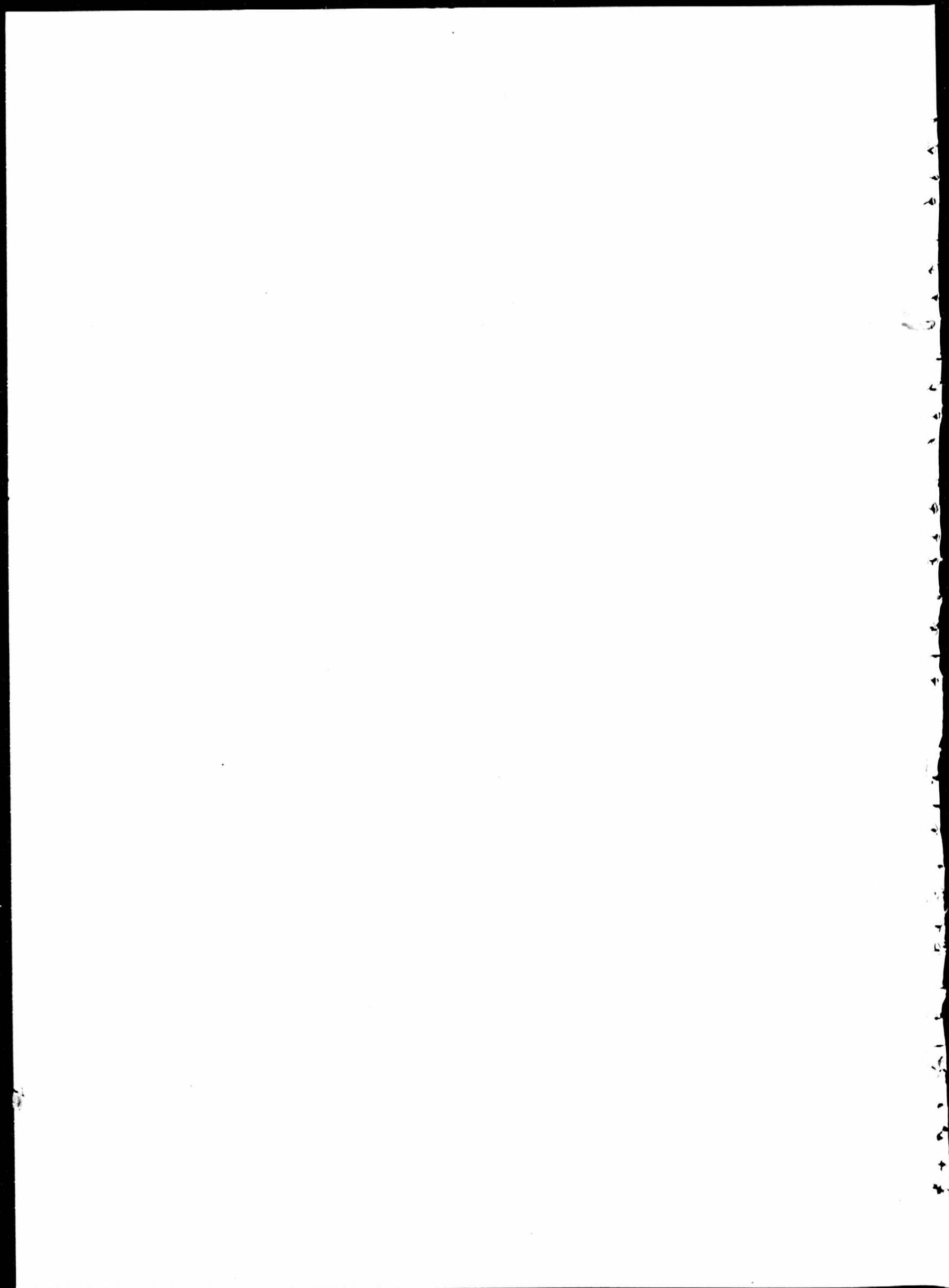
(6) APPELLANT ARGUES THAT IT IS APPARENT THAT APPELLANT WAS DENIED BASIC RIGHTS SUCH AS THE RIGHT TO, CONFRONT HIS ACCUSERS, AND TO KNOW THE NATURE AND CAUSE OF THE ACCUSATIONS AGAINST HIM. APPELLANT ARGUES THAT THE PRESIDENTS COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY COULD NOT RENDER ASSISTANCE BECAUSE HE COULD PRODUCE NO "EVIDENCE". E. G. , PLAINTIFFS EXHIBIT No. 10 PAGE 3. APPELLANT ARGUES THAT SINCE EXECUTIVE ORDER No. 11246, WAS NOT YET ISSUED, HE WAS UNABLE TO OBTAIN ITS BENIFITS.

(7) APPELLANT ARGUES THAT WHEN A MOTION FOR A CONSTITUTIONAL RULING IS PENDING, THAT APPELLANTS CAUSE SHOULD NOT HAVE BEEN DISMISSED. MOTION FOR A CONSTITUTIONAL RULING, FIAT APRIL 26 1966, C. A. 2221-65. APPELLANT FEELS THAT JUDGE McGARRAGHY ERRED IN DISMISSINGHIS CAUSE. APPELLANT ARGUES THAT JUDGE McGARRAGHY ERRED IN SHOWING FAVORITISM TO DEFENDANTS ATTORNEY, AND HOSTILITY TO PLAINTIFF.E.G. TRANSCRIPT. APPELLANT ARGUES THAT JUDGE McGARRAGHY ERRED IN NOT ORDERING HIS COURT REPORTER TO PROVIDE A VERBATIM TRANSCRIPT TO APPELLANT, E. G. , COURT RECORD, OCT 12 1966.

(8) APPELLANT ARGUES THAT APPELLANT WAS COERCED TO STATE HIS RELIGIOUS CONVICTIONS AND ETHICS, AND THAT THE REGULAR EMPLOYEES RIDICULED HIM

ARGUMENT

FOR BEING A SECULARIST. EXECUTIVE ORDER 10925 SECTION 203 WAS NOT APPLICABLE BECAUSE APPELLANT WAS NOT PERMITTED TO OBTAIN EVIDENCE, E.G., PLAINTIFFS EXHIBIT 10 PAGE 3. CIVIL SERVICE REGULATION 4.2 WAS NOT APPLICABLE BECAUSE APPELLANT WAS A PROBATIONARY EMPLOYEE, AND BECAUSE THE C. S. COMMISSION CHOSE NOT TO INVESTIGATE INTO THE MATTER. (9) THE APPELLANT ARGUES THAT CORRUPTION SHOULD NOT EXIST IN THE POSTAL SERVICE. HE FURTHER ARGUES THAT A PROBATIONARY EMPLOYEE SHOULD NOT BE SUBJECTED TO THE HARROWING TASK OF REFUSING TO GAMBLE, BECAUSE THE MERE FACT THAT HE IS A PROBATIONARY EMPLOYEE MAKES THE INVITATION COERSIVE. E. G., AFFIDAVIT TO PRESIDENT JOHNSON ON CORRUPTION, DATED MARCH 11 1965, ENCLOSURE D TO CIVIL SERVICE APPEAL. APPELLANT ARGUES THAT SINCE THE EISENHOWER ADMINISTRATION PASSED AN ETHICS CODE JULY 11 1958, THAT THERE SHOULD HAVE BEEN NO NEED FOR THE CORRUPTION, IF THE CODE HAD BEEN IN EFFECT. APPELLANT FURTHER ALLEGES THAT HE TURNED OVER TO POSTAL INSPECTOR STAPELTON DETAILS OF THE GAMBLING AT THE HYATTSVILLE, MARYLAND POST OFFICE.



CERTIFICATE OF SERVICE

COPY TO: APPELLEES ATTORNEY, FRANK Q. NEBEKER, ASSISTANT UNITED
STATES ATTORNEY, U.S. COURT HOUSE, WASHINGTON 1 D. C.
DELIVERED PERSONALLY, BY APPELLANT, APRIL 14 1967

Christos Poppos

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HYATTSVILLE, MARYLAND

103
654

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,283

CHRISTOS POPPOS, APPELLANT,

v.

RAMSEY CLARK, ATTORNEY GENERAL, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 5 1967

Nathan J. Paulson
CLERK

C.A. 2221-65

DAVID G. BRESS,
United States Attorney.

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Assistant United States Attorneys.

QUESTIONS PRESENTED

In the opinion of appellees the following questions are presented:

(1) Did the District Court judge err in granting appellees' motion for summary judgment where the termination of a probationary employee's employment with the Post Office Department was in accord with the regulations of that Department and the regulations of the Civil Service Commission?

(2) Do the statute and regulations providing for a probationary or trial period for incoming Federal employees during their first year, with differences in examination or testing procedures and differences in separation and appellate procedures create an unreasonable classification between probationary and post-probationary employees in violation of the due process clause of the Fifth Amendment of the United States Constitution?

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was appointed a distribution clerk at the Hyattsville, Maryland Post Office effective on October 26, 1964 "subject to satisfactory completion of one year probationary period beginning on 10-26-64." (Govt. Exh. # 1, Encl. # 1).¹ On January 6, 1965 he was assigned the West and Adelphi sections of the city scheme, comprising of 500 items, to study in order to learn the city distribution of mail. He was advised that the passing grade would be 95 percent. The Notice of Scheme Examination, POD Form 3987, addressed to appellant on that date bore the remark, "You will be expected to attain a score of 95%." (Govt. Exh. # 1, Encl. # 10 ((E) Enclosure therein)). When

¹ This reference is to the exhibits in the attached envelope to the Record on Appeal, which was before the District Court judge in connection with his consideration of defendants-appellees' motion for summary judgment.

tested on March 3, 1965 he attained a score of 4% correct and was advised by a memorandum dated March 4, 1965:

I regret that it is necessary to separate you from the Postal Service because you are not satisfactorily meeting the requirements of the position you occupy. Apparently you are not adapted to the type of work performed in the Post Office.

You were assigned the West and Adelphi sections of the city scheme on January 6, 1965. When tested on March 3, 1965 you attained a score of 4% correct. This performance indicates either a lack of ability or lack of interest which cannot be tolerated in the Postal Service.

Your last day of service will be Friday, March 5, 1965. (J. A. IX; Govt. Exh. # 1, Encl. # 2).

On March 6, 1965 appellant wrote to the postmaster of the Hyattsville Post Office appealing his dismissal. In a memorandum reply of March 8, 1965 the postmaster advised: "A score of 4% indicates an attitude so dilatory as to justify no leniency." (J. A. X; Govt. Exh. # 1, Encl. # 4). The "Notification of Personnel Action" Form, dated March 12, 1965 gave the following as the reason for appellant's separation: "Failure to make any serious effort to learn the city distribution scheme, attaining grade of only 4% after 4 months in the service." (Govt. Exh. # 1, Encl. # 14).

On March 9, 1965 appellant wrote to the Civil Service Commission, Personnel Department, advising that he had been separated from the Hyattsville Post Office Dispatch Section and inquiring as to his status and effect on future government employment. (Govt. Exh. # 1, Encl. # 5). On March 14, 1965 he also forwarded by letter as enclosures the two memoranda of March 4 and March 8, 1965 concerning his discharge. By letter reply of April 21, 1965, the Appeals Examining Office, United States Civil Service Commission, advised appellant that civil service regulations provided

that an agency may terminate an employee who is serving a probationary period because his work performance or conduct failed to demonstrate his fitness or his qualification for continued employment. Appellant was further advised that a probationary employee whose services are terminated for such reasons may appeal to the Civil Service Commission only on grounds that the action was taken for political reasons not required by law or resulted from discrimination because of sex, marital status, or physical handicap. He was further advised that there was no evidence in either of his letters or their enclosures to show that his removal was based upon any of these grounds and therefore the Civil Service Commission had no jurisdiction to accept his appeal. Appellant was given seven (7) days after receipt of the letter to file an appeal with the Board of Appeals and Review, United States Civil Service Commission. (J. A. XI; Govt. Exh. # 1, Encl. # 7).

Appellant by letter dated April 25, 1965 advised the Civil Service Commission that his letters of March 9th and March 14th were not intended as an appeal but were merely requests for information. He requested that his letter of April 25th be considered an appeal and alleged that the postmaster's letter of separation was prejudicial and vindictive. He further asserted that his discharge was due to political and religious reasons and his failure to participate in alleged corruption activities at the post office. (Govt. Exh. # 1, Encl. # 8). By letter of May 4, 1965 from the Board of Appeals and Review, appellant was formally advised that his only right of appeal to the Civil Service Commission was on the grounds that the termination was based on political reasons not required by statute, or resulted from discrimination because of sex or marital status, or from improper discrimination because of physical handicap. The Board further advised that he had to submit an affidavit setting forth the facts and circumstances in support of any allegations based on these grounds. The Board further advised that the Appeals Examining Office had issued him a premature decision in its letter of April 21st, which was being rescinded, and that he had ten (10) days in which

to exercise his right of appeal. (J. A. XII-XIIB; Govt. Exh. # 1, Encl. # 9).

On May 12, 1965 appellant filed his appeal with the Appeals Examining Office, (Govt. Exh. # 1, Encl. # 10). The Appeals Examining Office by letter dated June 30, 1965 advised appellant that: (1) Discrimination because of religion was not a ground for appeal; (2) His alleged illness because of influenza did not meet the criteria of a physical handicap within the meaning of the regulations; (3) His allegation of discrimination because of marital status was not supported by any information or showing; and (4) His allegation of political discrimination was not supported by adequate information or showing. That Office concluded that appellant had not brought his appeal within the purview of Section 315.806 of the Civil Service regulations. (J. A. XIII-XIIB; Govt. Exh. # 1, Encl. #11). Following an appeal to the Board of Appeals and Review, appellant was advised by the Board that it was "unable to find any statement of facts and circumstances showing a basis on which the Commission could properly assert jurisdiction for appellate review of the termination of your employment as Substitute Distribution Clerk during the probationary period." (J. A. XIV; Govt. Exh. # 1, Encl. # 13).

Appellant instituted this suit on September 14, 1965 contending that he was unlawfully removed from a position with the Post Office Department during his probationary period and seeking reinstatement. While the suit was pending Judge John J. Sirica, United States District Court, on February 1, 1966 granted appellees' motion to dismiss the complaint as to defendants Katzenbach (then Attorney General of the United States) and Gronouski (former Postmaster General).² On May 4, 1966 Judge Joseph C. Mc-

² In the memorandum in support of the motion counsel for appellees stated that appellant's complaint disclosed that he charged unlawful conduct therein on the part of the officials of the Post Office Department and not of the Justice Department and that he had failed to state any facts which could be interpreted as a claim against the Attorney General. As to the defendant Gronouski, counsel for appellees stated that it was clear that appellant was

Garraghy, United States District Court, granted appellees' motion for summary judgment on the ground that it appeared "from the pleadings, the administrative records relative to plaintiff and the affidavit filed herein that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law." This appeal followed.

CONSTITUTIONAL PROVISION, STATUTES, AND REGULATIONS INVOLVED

The Fifth Amendment, United States Constitution, provides in pertinent part:

No person shall be . . . deprived of life, liberty, or property, without due process of law; . . .

Title 5, United States Code, Section 632, provides in pertinent part:

The President is authorized to appoint by and with the advice and consent of the Senate three persons, * * *, as civil service commissioners, and said three commissioners shall constitute the United States Civil Service Commission.

Title 5, United States Code, Section 633, provides in pertinent part:

It shall be the duty of said commissioners:

(1) Preparation of.

First. To aid the President, as he may request in preparing suitable rules for carrying this section and sections 632, 635, 637, 638, and 640-642a of this title, into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which

suing the Postmaster General in his official capacity and that any claim for relief should be directed to the person who presently holds that official title. Rule 25(d), Federal Rules of Civil Procedure.

any such rules may relate to aid, in all proper ways, in carrying said rules and any modification thereof, into effect.

(2) Provisions of.

Second. Among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

.

4. *Probation before absolute appointment.*

Fourth. There shall be a period of probation before any absolute appointment or employment aforesaid.

Civil Service Regulation, 5 C.F.R. § 2.4 (Rev. 1964), provides:

Persons selected from registers of eligibles for career or career-conditional appointment shall be required to serve a probationary period under such terms and conditions as the Commission may prescribe.

Civil Service Regulation, 5 C.F.R. § 315.801 (a)(1), (b)(1)(2) (Rev. 1964), provides in pertinent part:

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a register.

(b) A person who is:

(1) Transferred under § 315.501; or

(2) Promoted, demoted, or reassigned, before he completed probation is required to complete the probationary period in the new position.

Civil Service Regulation, 5 C.F.R. § 315.802(a) (Rev. 1964), provides:

- (a) The probationary period required by § 315.801 is 1 year.

Civil Service Regulation, 5 C.F. R. § 315.803 (Rev. 1964), provides:

The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.

Civil Service Regulation, 5 C.F.R. § 315.804 (Rev. 1964), provides:

When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

Civil Service Regulation, 5 C.F.R. § 315.806(a), (b) (Rev. 1964), provides:

- (a) *Right to appeal.* Any employee is entitled to appeal to the Commission in writing from the agency's decision to terminate him under § 315.804 . . . only as provided in this section. The Commission's review does not include any matter except as provided in paragraphs (b) and (c) of this section.

- (b) *On discrimination.* An employee whose termination is subject to the provisions of § 315.804 . . . may appeal on the ground that the action taken was based on political reasons not required by statute, or resulted from discrimination because of sex or marital status, or from improper discrimination because of physical handicap. When an appeal is based on any of these grounds the appellant shall submit an affidavit setting forth the facts and circumstances on which the appeal is based.

United States Postal Manual in relevant sections and parts provides:

Sec. 333.54 Qualifying on Distribution

.541 Scheme Examinations

a. *Criteria for Assigning Examinations*

Examinations should be assigned for one purpose: to develop a well-qualified force.

(1) *During First Year*

- (a) During the first year of service an employee must qualify on at least one general scheme examination, and on such other distribution schemes in use which directly relate to his principal work assignment, but not to exceed 3,600 scheme items. . . .
- (b) Examinations shall be assigned to all career and temporary substitute clerks as necessary to maintain proper balance of qualified distributors on all schemes in use in their installations.

b. *Time allowed for Qualifying*

- (1) Except where an employee is assigned scheme training on official worktime, . . . , the maxi-

imum time allowable for an employee to qualify on scheme examinations will be:

(a) *Employee has no live record*

From 1 to 352 cards—allow 30 calendar days. Over 352 cards—compute at the rate of 16 cards (scheme items) each workday.

c. *Definition of Live Record on Examinations*

An employee will be considered to have a live record on a scheme examination for 3 years from the date on which he was scheduled for the examination. When his duty scope includes more than 6 general scheme or city scheme examinations, the 3 year period shall be extended 6 months for each such examination in excess of 6.

Sec. 333.553 Casing the Examination

a. *Number of Cards Required*

Employees shall be required to case 100 representative cards of the city, State, or section thereof, on which examined. . . .

Sec. 333.56 Grading Examinations

.561 Case Examinations

The examiner shall count as errors cards incorrectly cased and the cards not cased. The passing grade, for the first and all subsequent examinations, is 95 percent.

Sec. 333.564 Effect of Failing Grade

- a. Failure to pass an examination . . . requires repeating the examination within 30 days except as pro-

vided for in Postal Manual 333.541 for new employees . . .

Sec. 717.323 Probationary or Trial Period

Separation-disqualification must be effected during the trial period except when instigated by the Civil Service Commission as provided in 717.321. Action should be initiated at any time in the trial period when it becomes apparent that the employee is lacking in fitness and capacity for efficient service. . . .

Sec. 746.4 Adverse Action Appeal Procedure

A. *Eligibility to Appeal*

Any employee who has completed six consecutive months of employment from date of appointment has the right to appeal an adverse decision or adverse action taken against him. . . .

SUMMARY OF ARGUMENT

I

Appellant's dismissal as a probationary employee of the Post Office Department was in compliance with the regulations of the Post Office Department and the regulations of the Civil Service Commission in substance and procedure. The record clearly establishes that appellant made an exceptionally low score on a postal scheme examination after having been on duty for four months and that he was separated or discharged because his performance on this test indicated a lack of fitness and qualifications for the job of a mail distribution clerk to which he had been appointed. Appellant's contentions set forth in his brief to the effect that he was discharged because of political discrimination and because of other bias and prejudice have been rejected by the Civil Service Commission as unsupported by any facts or other credible information submitted by appellant in his appeal to it. His contentions that he was discharged

for these reasons rest on sheer conjecture and speculation on his part unsupported by anything in this record. The action of the Post Office Department and the Civil Service Commission on this record cannot be said to be arbitrary, capricious, or clearly erroneous. Under these circumstances the District Court judge did not err in granting appellees' motion for summary judgment.

II

The maintenance of a one year probationary or trial period in Federal employment is reasonable. The probationary period may be considered the logical and necessary extension of the examining process to determine how a prospective career employee will perform on the job. Thus, the distinction between probationary and post-probationary employees is not invidious or irrational in any manner. No equal protection rights as incorporated through the due process clause are violated by a system both reasonable and conducive to developing an efficient and productive public service through the retention of employees who have demonstrated their fitness and qualifications for the Federal jobs they hold.

ARGUMENT

- I. The District Court judge did not err in granting the government's motion for summary judgment where the termination of a probationary employee's employment with the Post Office Department was in accord with the regulations of that Department and of the Civil Service Commission.

It is well established that government employment, in the absence of legislation, can be revoked at the will of the appointing officer. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 896 (1961); *Bailey v. Richardson*, 86 U.S. App. D.C. 248, 253, 182 F.2d 46, 51 (1950), *aff'd*, 341 U.S. 918 (1951). In depriving a person of that employment, all that is necessary is that the discharging agency comply with the substantive and procedural rights of the employee recognized by statute and by the rules and regula-

tions of the Civil Service Commission and the employing agency. *Vitarelli v. Seaton*, 339 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *Kerr v. Barnes*, 100 U.S. App. D.C. 51, 242 F.2d 24 (1956); *Bailey v. Richardson, supra*. If the requirements of applicable statutes and regulations are clearly met and the action of the discharging agency was not clearly arbitrary, capricious or unwarranted, a court cannot step in and substitute its own judgment for that of the administrative agency. A court cannot substitute its judgment where the discharging agency has acted well within its discretion without disregarding the constitutional doctrine of separation of powers. *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247 (1962); *Bailey v. Richardson*, 86 U.S. App. D.C. at 264, 182 F.2d at 62; *Levy v. Woods*, 84 U.S. App. D.C. 138, 171 F.2d 145 (1948). See also *Angilly v. United States*, 105 F. Supp. 257 (S.D.N.Y.), *aff'd*, 199 F.2d 642 (1952); *Bander v. United States*, 141 Ct. Cl. 373, 379 fn. 4, 158 F. Supp. 564, 568 fn. 4, *cert. denied*, 358 U.S. 855 (1958).

In this case, appellant was accorded all of his rights under the applicable regulations implementing Section 633, Title 5, United States Code. Section 633(2)(4) provides that there shall be a period of probation before any absolute appointments or employment. The Civil Service Commission has provided that the first year of service of an employee who is given a career appointment is a probationary period. 5 C.F.R. § 315.801. When an agency decides to terminate an employee serving a probationary period because his work performance or conduct during this period failed to demonstrate his fitness or his qualifications for continued employment, it must terminate his services by notifying him in writing as to why he was being separated and the effective date of the action. 5 C.F.R. § 315.804. This was done in this case.

The determination of appellant's lack of fitness and qualifications for continued employment was in scrupulous accord with the regulations set forth in the United States Postal Manual. On January 6, 1965, a little over two months after his assignment to the Hyattsville Post Office,

appellant was assigned portions of the city scheme consisting of 500 items. At the rate of 16 items per day, he was allowed by regulation 32 days to learn the two sections of the city involved. Section 333.541b(1)(a). Appellant, in fact, did not take the examination until March 3, 1965, 39 working days after January 6th. He was required to case 100 representative cards of the sections of the city on which he was to be examined and to score 95 percent. Sections 333.553(a) and 333.561. He, in fact, only attained a score of 4 percent correct and accordingly was advised that he would be separated. As a probationary employee he did not have a right to repeat the examination. Sections 333.541 and 333.564a. Since Section 333.564a only provided for repeat examinations for regular employees who have completed their probationary or trial periods and specifically excepted new or probationary employees, the agency has consistently interpreted this regulation to the effect that repeat examinations were not provided for probationary employees. (J.A. VIII; Govt. Exh. #4). If an agency's interpretation of its own regulation is not unreasonable or plainly erroneous, the courts must respect it. *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413-14 (1945); *Robertson v. Udall*, 121 U.S. App. D.C. 218, 221, 349 F.2d 195, 198 (1965). Cf. *Udall v. Tallman*, 380 U.S. 1, 4, 16-17 (1965); *Bailey v. Richardson*, 86 U.S. App. D.C. at 254, 182 F.2d at 52. Since appellant was not entitled under regulations to reexamination and he had made such an exceptionally low grade, the agency pursuant to Section 717.323 decided that it had become apparent that he was lacking in fitness and capacity for efficient service. Such conclusion cannot be said to be arbitrary, capricious, or clearly erroneous.

Appellant was also accorded all administrative appeal rights to which he was entitled. Section 746.4A, United States Postal Manual, provides that any employee who has completed six consecutive months of employment from the date of appointment has the right to appeal an adverse action taken against him. In this case appellant had only completed a little over four consecutive months and thus

this appellate procedure was not available to him. Subsequently, he appealed to the Civil Service Commission on the limited grounds set forth in Civil Service Regulation 315.806, 5 C.F.R. § 315.806 (Rev. 1964). To support his contention that he had been discriminated against because of physical handicap, appellant asserted that he was ill with influenza 3 out of the 4 months he was employed at the post office.³ The Commission found that this allegation was insufficient to establish a physical handicap within the meaning of the regulation. In connection with his contention of discrimination because of marital status, the Commission concluded that appellant had failed to make a showing that because of marital status, either as a single or married person, his presence as an employee was not acceptable to supervisory officials and for that reason he had been dismissed. Appellant also in his appeal to the Commission charged political discrimination stating that it was known to all that he voted Republican in 1964 and Democratic in 1960. The Commission concluded that narration of one's voting history could not serve to show the existence of discrimination because of partisan political reason and that appellant had not shown that his discharge was based upon political reasons. He also alleged religious discrimination, but the Commission advised that it was not a ground for appeal under the provisions of Civil Service Regulation 315.806. In summary, appellant failed to set forth facts to support his allegations in his appeal to the Civil Service Commission.

From the foregoing, it is apparent that appellant was accorded all rights to which he was entitled by statute and regulations. Thus, the District Court did not err in granting appellees' motion for summary judgment.

³ It appears that appellant did not miss employment or take sick leave as a result of this illness, except for one day. (Govt. Exh. # 1, Encl. # 3).

II. The statute and regulations providing for a probationary or trial period for incoming Federal employees do not create an unreasonable classification between probationary and post-probationary employees in violation of the due process clause of the Fifth Amendment.

Congress has long recognized that there is a valid basis for distinguishing between probationary and post-probationary employees. In 1883, with the creation of the Civil Service System, Congress expressed its intention "that there shall be a period of probation before any absolute appointment or employment 'in the civil service is achieved'." 22 Stat. 403, 404. Such a rational basis of classification has been recognized in the Lloyd-La Follete Act, 5 U.S.C. § 652 and in the Veteran's Preference Act of 1944, 5 U.S.C. §§ 851-869. This Court in a number of decisions has implicitly recognized that the classification is a fair and rational one. See, e.g., *Hicks v. Day*, 110 U.S. App. D.C. 121, 389 F.2d 787 (1961); *Kirkpatrick v. Gray*, 91 U.S. App. D.C. 138, 198 F.2d 533 (1952), *cert. denied* *Priestly v. Donaldson*, 344 U.S. 880 (1952); *Levy v. Woods*, *supra*. The probationary period is a logical and necessary extension of the examining process and may be considered on-the-job testing to determine the fitness and capacity of an employee before he achieves regular civil service status. No equal protection rights as incorporated through the due process clause of the Fifth Amendment⁴ are violated

⁴ It has been stated that the due process clause does not apply in terms to holding of a Government office, for government employment is not "property" nor can it be held to be "liberty" or "life". *Bailey v. Richardson*, *supra*; see also *Angilly v. United States*, *supra*. However, it has come to be recognized that due process considerations cannot be answered by the easy assertion that an employee was not deprived of liberty or property. While one does not have a constitutional right to employment, there is an adequate private interest, and the Government may not deprive one thereof unless by means consonant with due process of law. A deprivation cannot be arbitrary or discriminatory. See *Wieman v. Updegraff*, 344 U.S. 183, 191-92 (1952); *United Public Workers v. Mitchell*, 330 U.S. 75, 100 (1947); *Homer v. Richmond*, 110 U.S. App. D.C. 226, 229, 292 F.2d 719, 722 (1961).

by such classification. *Medoff v. Freeman*, 362 F.2d 472 (1st Cir. 1966).⁵

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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⁵ The courts have noted that incidental stigma due to separation or discharge from government employment, if in accord with relevant statutes and regulations, creates no rights in an employee entitling him to any relief. *Medoff v. Freeman, supra; Bailey v. Richardson, supra.*

